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and 14 July 2008, respectively, are hereby **SET ASIDE** and **REVERSED**. The Order dated 17 January 2007 of the Municipal Trial Court in Cities, Branch 2, Malolos City, in Civil Case Nos. 03-140 to 03-143 is hereby **REINSTATED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 184079. April 17, 2013]

SPS. ARMANDO SILVERIO, SR. AND REMEDIOS SILVERIO, *petitioners, vs.* **SPS. RICARDO AND EVELYN MARCELO,** *respondents.*

[G.R. No. 184490. April 17, 2013]

SPS. EVELYN AND RICARDO MARCELO, *petitioners, vs.* **SPS. ARMANDO SILVERIO, SR. AND REMEDIOS SILVERIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NATURE.— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. In an unlawful detainer case, the sole issue for resolution is physical or material possession

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of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.

2. ID.; CIVIL PROCEDURE; FORUM SHOPPING; THREE TESTS TO VERIFY WHETHER THERE IS IDENTITY OF CAUSES OF ACTION FOR PURPOSES OF APPLYING THE PRINCIPLE OF *RES JUDICATA*, REITERATED.— In *Agustin v. Delos Santos*, the Court cited three tests to verify whether there is identity of causes of action for purposes of applying the principle of *res judicata*. The first test is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not. Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had touched on a matter already decided, or if the parties are in effect "litigating for the same thing."

3. ID.; ID.; ID.; ID.; "SAME EVIDENCE TEST", APPLIED; A PARTY IS ENGAGED IN FORUM SHOPPING BY FILING SEPARATE CASES FOR UNLAWFUL DETAINER BASED ON A SINGLE CLAIM OF OWNERSHIP.— By applying the "same evidence test," however, it becomes apparent that the proof necessary to obtain affirmative relief in Civil Case No. 2004-269 is the same as that in Civil Case No. 2004-271. Since the spouses Marcelo are claiming sole ownership of Lot 3976 in their MSA, the evidence needed to establish better right of possession over the house constructed by Florante Marcelo and Marilou Silverio, and the one built by the Silverios is the same, regardless of the fact that they were built on separate portions of said lot. We have ruled time and again that "a party cannot, by varying

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the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated." Evidently, the spouses Marcelo engaged in forum shopping by filing separate cases for unlawful detainer based on a single claim of ownership over Lot 3976. Said act is likewise tantamount to splitting a cause of action which, in this case, is a cause for dismissal on the ground of *litis pendentia*. On this score alone, the petition for review on *certiorari* filed by the spouses Marcelo in G.R. Nos. 184490 must fail, alongside their averments in G.R. No. 184079.

4. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; PARTIES WHO HAVE ESTABLISHED THEIR DWELLING ON THE SUBJECT LOT FOR A LONG PERIOD HAVE BETTER RIGHT TO POSSESS THE SAME THAN MERE HOLDERS OF TAX DECLARATION.— It is undisputed by the spouses Marcelo that the Silverios presently occupy those portions of Lot 3976 which are the subjects of the consolidated petitions before us. In particular, the Silverios tie their possession of the parcel at issue in G.R. No. 184490 to Florante Marcelo who appropriated a portion of Lot 3976 for himself, and with his wife, constructed a house thereon in 1986. As regards the portion of Lot 3976 subject of G.R. No. 184079, the Silverios have established their dwelling thereon in 1987 - long after Lot 3976 was classified as alienable and disposable public land on January 3, 1968. Meanwhile, the spouses Marcelo insist on their better right to possess the contested parcels as holders of Tax Declaration No. E-008-19942 in the name of Ricardo Marcelo. Said tax declaration, which covers Lot 3976, was issued for the year 2005 and canceled Tax Declaration No. E-008-18821, also under the name of Ricardo Marcelo. Other than said tax declaration, however, we found nothing in the records of these cases to show that the spouses Marcelo have been consistently paying taxes on Lot 3976. We note that Tax Declaration No. E-008-19942 was issued fairly recently, and by itself, is inadequate to convince the Court that the spouses Marcelo have been in open, continuous and exclusive possession of the subject portions of Lot 3976, by themselves or through a successor-in-interest, since January 3, 1968. More importantly, it is ingrained in our jurisprudence that the mere declaration of a land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual

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possession. Considering that the Silverios are in actual possession of the subject portions of Lot 3976, they are entitled to remain on the property until a person who has a title or a better right lawfully ejects them.

SERENO, *C.J.*, *concurring and dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; DEFINED; ELEMENTS THAT MUST CONCUR FOR FORUM SHOPPING TO EXIST.— [W]e have defined forum-shopping as the act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or a special civil action for *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. For forum-shopping to exist, the following elements must be present: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; FORUM-SHOPPING, NOT A CASE OF; WHERE THE PARTIES ENTERED INTO SEPARATE CONTRACTS INVOLVING TWO DISTINCT HOUSES BOTH LOCATED IN A PARCEL OF LAND, FILING OF SEPARATE CASES DOES NOT CONSTITUTE FORUM-SHOPPING.— On their face, the two Complaints filed by Sps. Marcelo seem to have an overwhelming identity of elements, for in both cases, the right to which they hinge their claim is their purported ownership of Lot No. 3976. This fact, however, cannot be used as ammunition to insist on a supposed violation of the rule on forum-shopping. It is clear that the parties entered into two separate contracts, thus signifying that there are also two separate causes of action. In examining the two causes of action, we must compare the contracts entered into by the parties. In G.R. No. 184079, Sps. Marcelo alleged that Sps. Silverio were allowed to construct a house on Lot No. 3976 sometime in May 1987, on the condition that the latter would vacate the property

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the moment the former would need it. Meanwhile, in G.R. No. 184490, Sps. Marcelo also alleged that Sps. Silverio were allowed to stay in **another house** built in 1986 by Florante Marcelo and Marilou Silverio (but abandoned sometime in 1998), with the understanding that the house would be dismantled the moment Sps. Marcelo would need the premises. Needless to say, the ownership of the entire Lot No. 3976 is immaterial. In each case, the contractual relations of the parties are confined only to certain portions of Lot No. 3976. x x x There is merit in the contention that this situation may be akin to that of condominium units, in which the owner-developer is given the right to eject each tenant separately. The rights and duties of both parties need not be reduced to a written contract, as long as the terms remain clear - that Sps. Silverio should vacate the two houses once Sps. Marcelo decided to use them. It therefore follows that there is no *res judicata*, for the finding of ownership in favor of Sps. Marcelo relegates their right to possess only the specific area, subject of each case.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE ONLY ISSUE IS PHYSICAL POSSESSION; PARTIES WHO HAVE PROVEN ACTUAL POSSESSION HAVE A BETTER RIGHT TO REMAIN IN THE PROPERTY; RATIONALE.— [W]ell-settled is the rule that in an ejectment suit, the only issue is possession *de facto* or physical or material possession, and not possession *de jure*. So that even if the question of ownership is raised in the pleadings, as in this case, the court may pass upon such issue but only to determine the question of possession, especially if the former is inseparably linked with the latter. x x x It is not denied that Sps. Silverio are currently in actual possession of the area in Lot No. 3976 where the two houses stand, while Sps. Marcelo occupy only 50 square meters thereof. This has been the situation for more than 30 years. Thus, absent any party claiming to have a better right to lawfully eject them, Sps. Silverio ought to remain on the property. x x x The rationale behind this ruling was already explained by the Court: "It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order." In fact, even a wrongful

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possessor may at times be upheld by the courts, though only temporarily and for the purpose of maintaining public order. The larger and permanent interests of property require that in such rare and exceptional instance, the courts must give preference to and permit actual but wrongful possession.

4. CIVIL LAW; PUBLIC LANDS; THE SUBJECT LAND REMAINS A PUBLIC LAND AND WITHOUT REGISTERED OWNER.— [P]ublic lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable. Failure of the applicant to overcome this threshold retains the property within the public realm. As clarified on record, Lot No. 3976 is still a public land, and no land patent has been issued over it as a whole or over any portion thereof. The unnumbered MSA filed by Sps. Marcelo on 30 September 1991 has already been cancelled by the DENR in a Decision dated 11 July 2007 for violating Section 2 of Republic Act No. 730, and for not complying with the requirements of Commonwealth Act No. 141. Hence, the lot has no registered owner.

APPEARANCES OF COUNSEL

Pasay City Lawyers Association for Spouses Marcelo.
Lopez Rance Aldea & Associates for Sps. Silverio.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court are twin petitions for review on *certiorari* under Rule 45 of the *1997 Rules of Civil Procedure*, as amended.

The petition[1] in G.R. No. 184079 was filed by petitioners spouses Armando Silverio, Sr. and Remedios Silverio to assail

[1] *Rollo* (G.R. No. 184079), pp. 18-49.

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the Decision[2] dated March 18, 2008 and Resolution[3] dated August 12, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 98105. The CA had affirmed the Decision[4] dated November 7, 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 258, in Civil Case No. 06-0099, which in turn, affirmed the Decision[5] dated September 6, 2005 of the Metropolitan Trial Court (MeTC), Branch 78 in Civil Case No. 2004-271. The Parañaque MeTC, Branch 78, had ordered petitioners to demolish the improvements they have introduced in Lot No. 3976, Parañaque Cad. 299 (Lot 3976), to peacefully surrender possession of the same to respondents spouses Ricardo and Evelyn Marcelo and to pay ₱1,000 per month from May 20, 2004 until they have done so. The court *a quo* likewise directed petitioners to pay respondents ₱20,000 as attorney's fees plus ₱3,000 per appearance of the latter's counsel and costs.

Meanwhile, the petition[6] in G.R. No. 184490 was filed by petitioners spouses Evelyn and Ricardo Marcelo to contest the Decision[7] dated March 27, 2008 and Resolution[8] dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. The CA had reversed and set aside the Decision[9] dated December 29, 2006 of the RTC of Parañaque City, Branch 257, in Civil Case No. 06-0237, which in turn, affirmed *in toto* the Decision[10]

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[2] *Id.* at 53-66. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta concurring.

[3] *Id.* at 67-68.

[4] *Id.* at 111-113. Penned by Judge Raul E. De Leon.

[5] *Id.* at 114-117. Penned by Executive Judge Jansen R. Rodriguez.

[6] *Rollo* (G.R. No. 184490), pp. 6-49.

[7] *Id.* at 108-125. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid concurring.

[8] *Id.* at 127-132. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Hakim S. Abdulwahid and Noel G. Tijam concurring.

[9] *Id.* at 78-84. Penned by Judge Rolando G. How.

[10] *Rollo* (G.R. No. 184079), pp. 480-483. Penned by Judge Donato H. De Castro.

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dated April 25, 2006 of the MeTC of Parañaque City, Branch 77, in Civil Case No. 2004-269. The Parañaque MeTC, Branch 77, had ordered respondents Armando Silverio, Sr. and Remedios Silverio to vacate the Marcelo Compound in Lot 3976 and to surrender possession thereof to petitioners. The court *a quo* likewise directed respondents to pay petitioners ₱1,000 per month from May 20, 2004 until they have completely moved out of said property, ₱10,000 as attorney's fees and costs.

The factual antecedents of these consolidated petitions are culled from the records.

G.R. No. 184079

On July 12, 2004, respondents spouses Ricardo and Evelyn Marcelo filed a Complaint[11] for unlawful detainer against petitioners spouses Armando Silverio, Sr., and his mother, Remedios Silverio. The case was docketed as Civil Case No. 2004-271 before the MeTC of Parañaque City, Branch 78.

Respondents represented themselves as the lawful owners and possessors of Lot 3976, a residential land with an area of 5,004 square meters located in Marcelo Compound, Philip St. Ext., Multinational Village, Parañaque City. They claimed ownership over said lot by virtue of a Decision[12] dated December 12, 1996 of the Department of Environment and Natural Resources (DENR) in DENR-NCR Case No. 95-253 and Tax Declaration No. E-008-19942.[13]

Respondents alleged that sometime in May 1987, petitioners sought permission to construct a house within Lot 3976. Respondents agreed on the condition that petitioners will vacate the moment they need the land. Subsequently, respondents made an oral demand on petitioners to leave the house and return possession of the lot within 15 days from notice. In a

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[11] *Id.* at 118-121.

[12] *Id.* at 301-327.

[13] *Id.* at 328.

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Letter[14] dated May 18, 2004, respondents reiterated their demand for petitioners to demolish the house, vacate the 120-square-meter lot on which the house stands and to pay ₱1,000 as rent until they have done so.

As respondents' demands remained unheeded, they filed a complaint for unlawful detainer against petitioners before *Barangay* Moonwalk in Parañaque City. The case was docketed as *Barangay* Case No. 05/04-051. On July 24, 2004, Atty. Wendell E. Coronel, *Lupon*/*Pangkat* Secretary of Barangay Moonwalk issued a Certification to File Action[15] in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In their Answer,[16] petitioners sought the dismissal of the complaint on the ground that respondents had filed a similar case against them before the MeTC of Parañaque City, Branch 77, docketed as Civil Case No. 2004-269. The latter case is the subject of the petition in G.R. No. 184490.

On September 6, 2005, the MeTC of Parañaque City, Branch 78, rendered judgment in favor of respondents Marcelo. The court *a quo* ruled out forum shopping upon finding that the house subject of the present case is different from that in Civil Case No. 2004-269. The structure involved in the latter case was "originally occupied by [petitioners'] relative and later taken over by [them]"[17] while the house subject of the present case was constructed by petitioners themselves. The MeTC held that petitioners failed to refute the character of their possession as merely tolerated by respondents and they became deforciants upon the latter's demand for them to vacate the subject premises. The court ordered petitioners to pay respondents ₱1,000 as reasonable compensation for the use and occupation of the premises, attorney's fees of ₱20,000 and ₱3,000 per appearance of counsel for respondents.

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[14] *Rollo* (G.R. No. 184490), p. 64.

[15] *Id.* at 56-A.

[16] *Rollo* (G.R. No. 184079), pp. 122-123.

[17] *Id.* at 115.

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On appeal, the Parañaque RTC, Branch 258, affirmed the ruling of the MeTC. In a Decision dated November 7, 2006, the RTC sustained respondents' right to bring action to evict petitioners from the contested property. It found petitioners' claim of ownership unsubstantiated and their defense of forum shopping without merit since the properties involved in Civil Case Nos. 2004-269 and 2004-271 are different from each other.

Petitioners moved for reconsideration but their motion was denied in an Order[18] dated February 5, 2007. Thereafter, petitioners filed a Petition for Review[19] under Rule 42 of the Rules with the CA.

In the assailed Decision dated March 18, 2008, the appellate court affirmed *in toto* the RTC judgment. It found no basis to dismiss respondents' complaint based on either forum shopping or splitting a cause of action. The CA disregarded petitioners' argument that the subject property is public land in view of their admission in their Answer[20] that respondents are the owners and possessors thereof.

Petitioners filed a Motion for Reconsideration[21] which the CA denied in a Resolution[22] dated August 12, 2008.

G.R. No. 184490

On July 12, 2004, petitioners spouses Ricardo and Evelyn Marcelo filed a Complaint[23] for unlawful detainer against respondents Armando Silverio, Sr., and Remedios Silverio. The case was docketed as Civil Case No. 2004-269 before the MeTC of Parañaque City, Branch 77.

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[18] *Id.* at 174.

[19] CA *rollo* (CA-G.R. SP No. 98105), pp. 8-31.

[20] *Rollo* (G.R. No. 184079), pp. 122-123.

[21] *Id.* at 69-76.

[22] *Id.* at 67-68.

[23] *Rollo* (G.R. No. 184490), pp. 50-54.

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Petitioners' Complaint bore essentially the same allegations as their Complaint in Civil Case No. 2004-271 save for two allegations: (1) respondents requested petitioners' permission to construct a house in Lot 3976 *in May 1986*; and (2) respondents "*improved the house and even operated a sari-sari store*"[24] in Marcelo Compound.

In their Answer[25] dated August 3, 2004, respondents belied petitioners' claim of exclusive ownership and possession of the subject property. According to respondents, the land in dispute was first occupied by Graciano Marcelo along with his sons Armando Marcelo, petitioner Ricardo Marcelo and Florante Marcelo. Respondents anchor their right of possession on Florante Marcelo, in his capacity as an ostensible co-owner of the contested property. Florante Marcelo is the husband of Marilou Silverio, the daughter of respondents spouses Silverio.

Subsequently, petitioners submitted an Amended Complaint[26] dated August 14, 2004, in which they clarified that it was the spouses Florante Marcelo and Marilou Silverio, and not the respondents, who sought their consent to build a house and live in Marcelo Compound. Petitioners recounted that it was after Florante Marcelo and Marilou Silverio separated in 1998 and abandoned said house that respondents asked for permission to stay therein. Petitioners agreed upon an understanding that respondents shall "dismantle said house the moment [petitioners] need the premises."[27] However, respondents refused to move out and surrender possession of the subject property upon demand.

In a Demand Letter[28] dated May 18, 2004, petitioners insisted on their demand for respondents to demolish the house they built, vacate the 80-square-meter lot on which it stands, to surrender peaceful possession of the same and to pay ₱1,000 as rent until they have done so.

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[24] *Id.* at 51.

[25] Records, Vol. 2, pp. 12-13.

[26] *Rollo* (G.R. No. 184490), pp. 69-73.

[27] *Id.* at 70.

[28] *Id.* at 75.

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As respondents ignored petitioners' demands, the latter brought a complaint for unlawful detainer against respondents before *Barangay* Moonwalk in Parañaque City. The case was docketed as *Barangay* Case No. 05/04-070. On July 24, 2004, Atty. Wendell E. Coronel, Lupon/Pangkat Secretary of Barangay Moonwalk issued a Certification to File Action[29] in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In an Answer[30] dated September 8, 2004, respondents assailed the DENR Decision dated December 12, 1996 for supposedly awarding ownership of the subject property to petitioners. According to respondents, Graciano Marcelo, Sr., petitioner Ricardo Marcelo's father, was a tenant of Fabian Lumbos before the latter sold his land to Mike Velarde. Subsequently, Velarde fenced the subject property, which respondents insist is not part of the parcels that Lumbos sold to Velarde. Upon the belief that Lot 3976 is still government property, the sons of Graciano Marcelo, Sr., including petitioner Ricardo Marcelo and Florante Marcelo, divided the land among themselves and occupied the same. On the tract allotted to Florante, he took in respondent Remedios Silverio to live with him and his wife, Marilou.

Respondents averred that it was in 1997 when the Marcelos conceived the idea of applying for a sales patent over Lot 3976 with the DENR. The Marcelo siblings appointed petitioner Ricardo Marcelo to file the Miscellaneous Sales Application (MSA) in their behalf, sharing the expenses among themselves. However, it was not until later that the Marcelo siblings learned that Ricardo had filed the application in his name alone. Respondents revealed that Ricardo had sold several portions of Lot 3976 even before he could apply for a sales patent thereon.

On February 3, 2005, respondents filed a Supplemental Answer[31] in which they charged petitioners with forum shopping

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[29] *Id.* at 66.

[30] CA *rollo* (CA-G.R. SP No. 98713), pp. 52-54.

[31] *Id.* at 65-66.

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for filing another ejectment case against them, docketed as Civil Case No. 2004-271 before Branch 78 of the Parañaque MeTC.

In a Decision dated April 25, 2006, the MeTC of Parañaque City, Branch 77, ruled for petitioners Marcelo. The court *a quo* ordered respondents to vacate the subject property, to surrender peaceful possession thereof to petitioners, to give reasonable rent from May 20, 2004 until they have moved out and to pay attorney's fees and costs.

On the basis of the Decision dated December 12, 1996 of the DENR, the MeTC declared petitioners the owners of the subject property, with concomitant right to possess it. The court found no evidence to support respondents' possessory claim and considered their occupation of the subject land as merely tolerated by petitioners. The court *a quo* discounted forum shopping upon finding that the house concerned in Civil Case No. 2004-271 was built by petitioners whereas the house in this case was only taken over by them.

In a Decision dated December 29, 2006, the Parañaque RTC, Branch 257, affirmed *in toto* the MeTC ruling. The RTC declared petitioners as the lawful possessors of the subject property by virtue of Tax Declaration No. E-008-19942 in the name of petitioner Ricardo Marcelo. It explained that Florante Marcelo's affinity with petitioner Ricardo, alone, did not automatically make him a co-owner of the contested property.

Dissatisfied, respondents elevated the case to the CA through a petition[32] for review under Rule 42.

In the assailed Decision dated March 27, 2008, the CA reversed and set aside the RTC judgment. It brushed aside the alleged procedural infirmities that attended the filing of respondents' petition for being trivial and insufficient to warrant its dismissal. The appellate court found petitioners guilty of forum shopping and splitting of a cause of action. It observed

[32] *Id.* at 7-31.

that the two cases for unlawful detainer filed by petitioners are based on a single claim of ownership over Lot 3976 which embraces the subject properties. The CA explains that an adjudication in either suit that petitioners are entitled to the possession of Lot No. 3976 would necessarily mean *res judicata* in the other case. The appellate court noted that the demand letter in both cases was served on respondents on the same day.

Issues/Assignment of Errors

On September 29, 2008, spouses Armando Silverio, Sr. and Remedios Silverio filed a petition for review on *certiorari* which was docketed as G.R. No. 184079. Said petition, which seeks to reverse and set aside the Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the CA in CA-G.R. SP No. 98105, assigns a lone error:

THE COURT OF APPEALS, WITH ALL DUE RESPECT, SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL INTERPOSED BY PETITIONERS IN THE ABOVE-ENTITLED CASE ON TECHNICALITIES AND HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, AND/OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.[33]

A few days later, on October 2, 2008, spouses Evelyn and Ricardo Marcelo filed a Petition for Review on *Certiorari* which was docketed as G.R. No. 184490. Said petition, in turn, contests the Decision dated March 27, 2008 and the Resolution dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. Condensed, the issues presented by petitioners are as follows: (1) Whether the filing of separate complaints for unlawful detainer against the same lessees who refuse to vacate, on demand, two different houses constitutes forum shopping and splitting of a cause of action; (2) Whether the CA erred in dismissing

[33] *Rollo* (G.R. No. 184079), p. 37.

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Civil Case No. 2004-269; and (3) Whether the instant petition was filed seasonably.

Essentially, the questions that must be addressed in the consolidated petitions before us are common: (1) Are the spouses Ricardo and Evelyn Marcelo guilty of forum shopping? and (2) Who between the spouses Marcelo and the Silverios have better right to the physical possession of Lot 3976?

The Parties' Arguments

Armando Silverio, Sr. and Remedios Silverio allege mainly that spouses Ricardo and Evelyn Marcelo engaged in forum shopping and split a common cause of action when they filed separate complaints for unlawful detainer based on a single claim of ownership over Lot No. 3976. The Silverios maintain that the spouses Marcelo are simply applicants for the issuance of a sales patent over Lot No. 3976 and are actually occupying only 50 square meters of the 5,020-square-meter property. In support thereof, the Silverios invoke the Decision[34] dated July 11, 2007 of the DENR which annulled and canceled the MSA filed by the spouses Marcelo over Lot No. 3976. Ultimately, the Silverios insist that the subject property remains a public land.

In their consolidated Memorandum[35] for G.R. Nos. 184079 and 184490, spouses Ricardo and Evelyn Marcelo denied the allegations of forum shopping and splitting a single cause of action. They assert the following distinctions between the houses involved in Civil Case Nos. 2004-269 and 2004-271: (1) the house in Civil Case No. 2004-271 was built by the Silverios in May 1987 while the house subject of Civil Case No. 2004-269 was constructed by Florante Marcelo and Marilou Silverio in May 1986; and (2) the house in Civil Case No. 2004-271 has been occupied by the Silverios from the beginning while they merely took over the house referred to in Civil Case No. 2004-269 and put up a *sari-sari* store therein. The spouses Marcelo

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[34] *Id.* at 95-110.

[35] *Id.* at 449-479.

contend that while they claim ownership of Lot No. 3976 as a whole, the portions thereof on which the two houses stand are distinct — one has an area of 80 square meters while the other measures 120 square meters. In view of this, the spouses Marcelo believe that the refusal by the Silverios to vacate said houses violated at least two rights and gave rise to separate causes of action.

The Court's Ruling

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[36] In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[37]

Here, the spouses Ricardo and Evelyn Marcelo brought separate complaints for unlawful detainer against Armando Silverio, Sr. and Remedios Silverio based on their refusal to vacate two houses inside the Marcelo Compound. In both Civil Case Nos. 2004-269[38] and 2004-271, the spouses Marcelo anchor their right of possession over the subject properties on Tax Declaration No. E-008-19942 and on the Decision dated December 12, 1996 of the DENR in DENR-NCR Case No. 95-253. The DENR gave due course to the MSA filed by the

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[36] *Corpuz v. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350, 362.

[37] *Barrientos v. Rapal*, G.R. No. 169594, July 20, 2011, 654 SCRA 165, 171.

[38] *Rollo* (G.R. No. 184490), pp. 50-51.

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spouses Marcelo over Lot 3976, where the Marcelo Compound is situated.

For their part, the Silverios seek the dismissal of both complaints on the grounds of forum shopping and splitting a single cause of action.

Forum shopping is a deplorable practice of litigants consisting of resort to two different *fora* for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment.[39] The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions.[40]

In *Chua v. Metropolitan Bank & Trust Company*,[41] the Court enumerated the ways by which forum shopping may be committed:

> Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[42]

Common to these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as "the act or omission by which a party violates the right of another."[43]

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[39] *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, July 22, 2009, 593 SCRA 440, 450.

[40] *Id.*

[41] G.R. No. 182311, August 19, 2009, 596 SCRA 524.

[42] *Id.* at 535-536.

[43] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215.

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In this case, the spouses Marcelo filed two cases for unlawful detainer against Armando Silverio, Sr. and Remedios Silverio on July 12, 2004. In Civil Case No. 2004-269, the cause of action is the alleged unlawful withholding of possession by the Silverios of the house which Florante Marcelo and Marilou Silverio constructed in Lot 3976. On the other hand, the cause of action in Civil Case No. 2004-271 for unlawful detainer is the supposed unlawful withholding of possession by the Silverios of the house which they, themselves, built in Lot 3976. While the main relief sought in Civil Case No. 2004-269 appears to be different from that in Civil Case No. 2004-271, the right on which both claims are hinged is the same – the purported ownership by the spouses Marcelo of Lot 3976. Indeed, paragraph 3 of the spouses Marcelo's Complaint in both cases similarly read:

> 3. Plaintiffs are the lawful owners and possessors of a residential lot containing an area of 5,004 sq. m. known as Lot 3976 Parañaque Cad. 299 by virtue of a final and executory decision of the [Land] Management Bureau (DENR) promulgated on Dec. 12, 1996 and Tax Dec. No. E-008-083-77 issued in their name by the City Assessor of Parañaque City. Certified true copy of Tax Dec. No. E-008-19942 is hereto attached as "*Annex "A*".[44]

Basically, the cause of action in both cases is the unlawful withholding by the Silverios of Lot 3976.

We find no merit in the contention of the spouses Marcelo that Civil Case Nos. 2004-269 and 2004-271 present distinct causes of action since they pertain to separate portions of the Marcelo Compound. The analogy drawn by the spouses Marcelo between the ejectment of a tenant leasing several units of a condominium project and the unlawful detainer cases they brought against the Silverios is misplaced. In the former, there exists a lessor-lessee relationship between the owner of the condominium and the tenant, respectively. Hence, the rights and duties of the condominium owner and the tenant are defined

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[44] *Rollo* (G.R. No. 184079), pp. 118-119; *rollo* (G.R. No. 184490), pp. 50-51.

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by the terms of the contract. In contrast, the parties in this case present adverse possessory claims over those portions of Lot 3976 in which the houses concerned are situated.

In particular, the spouses Marcelo assert better right of possession based on their alleged right as "lawful owners and possessors of a residential lot containing an area of 5,004 sq. m. known as Lot 3976 Parañaque Cad. 299 by virtue of a final and executory decision of the [Land] Management Bureau (DENR) promulgated on Dec. 12, 1996 and Tax Dec. No. E-008-083-77 issued in their name by the City Assessor of Parañaque."[45] For their part, the Silverios claim better right of possession on account of their actual occupation of the subject properties. In either case, a finding that the spouses Marcelo have better right to possess the subject property could only be premised on their lawful possession of the entire Lot No. 3976, Parañaque Cad. 299. It follows, therefore, that a final adjudication in favor of the spouses Marcelo in one case would constitute *res judicata* in the other.

In *Agustin v. Delos Santos*,[46] the Court cited three tests to verify whether there is identity of causes of action for purposes of applying the principle of *res judicata*. The first test is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[47] The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.[48] Aside from the "absence of inconsistency test" and "same evidence test," we have also

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[45] *Id.*; *id.*

[46] G.R. No. 168139, January 20, 2009, 576 SCRA 576.

[47] *Id.* at 588-589.

[48] *Id.* at 590.

ruled that a previous judgment operates as a bar to a subsequent one when it had touched on a matter already decided, or if the parties are in effect "litigating for the same thing."[49]

The "absence of inconsistency test" finds no application in this case since it presupposes that a final judgment has been rendered in the first case. By applying the "same evidence test," however, it becomes apparent that the proof necessary to obtain affirmative relief in Civil Case No. 2004-269 is the same as that in Civil Case No. 2004-271. Since the spouses Marcelo are claiming sole ownership of Lot 3976 in their MSA, the evidence needed to establish better right of possession over the house constructed by Florante Marcelo and Marilou Silverio, and the one built by the Silverios is the same, regardless of the fact that they were built on separate portions of said lot. We have ruled time and again that "a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated."[50]

Evidently, the spouses Marcelo engaged in forum shopping by filing separate cases for unlawful detainer based on a single claim of ownership over Lot 3976. Said act is likewise tantamount to splitting a cause of action which, in this case, is a cause for dismissal on the ground of *litis pendentia*. On this score alone, the petition for review on *certiorari* filed by the spouses Marcelo in G.R. Nos. 184490 must fail, alongside their averments in G.R. No. 184079.

In any case, even if we confront the issue as to who between the spouses Marcelo and the Silverios have better right of possession over the subject properties, the former would still not prevail.

As earlier stated, the DENR-NCR had canceled the MSA filed by the spouses Marcelo in its Decision[51] dated July 11,

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[49] *Id.* at 591.

[50] *Asia United Bank v. Goodland Company, Inc.*, *supra* note 43, at 217.

[51] *Supra* note 34.

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2007. The Department found that the spouses Marcelo failed to satisfy the requirements for the acquisition of Lot 3976 under the Public Land Act. The DENR-NCR clarified that the Decision dated December 12, 1996 gave due course to the application, not only of the spouses Marcelo, but also those of other applicants. It gave weight to the findings in the ocular inspection that the spouses Marcelo are actually occupying only 50 square meters of Lot 3976 while the remaining portions are inhabited by 111 families. The DENR-NCR adds that the spouses Marcelo cannot claim the entire Lot No. 3976 since Republic Act No. 730[52] limits the area of land that may be applied for to 1,000 square meters.[53] In conclusion, the DENR-NCR held that Lot 3976 remains a public land and its dwellers may apply for the purchase of those portions that they are actually occupying.

Factual considerations relating to lands of the public domain properly rest within the administrative competence of the Director of Lands and the DENR. Findings of administrative agencies, which have acquired expertise because of their jurisdiction, are confined to specific matters and are accorded respect, if not finality, by the courts. Even if they are not binding to civil courts exercising jurisdiction over ejectment cases, such factual

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[52] AN ACT TO PERMIT THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS.

[53] SECTION 1. Notwithstanding the provisions of Sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten percent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments.

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findings deserve great consideration and are accorded much weight.[54]

Nonetheless, the declaration by the DENR-NCR that Lot 3976 is still part of the public domain does not mean that neither of the parties is entitled to the possession of the subject properties. In *Pajuyo v. Court of Appeals*,[55] we reiterated the policy behind the summary action of forcible entry and unlawful detainer, thus:

> It must be stated that the purpose of an action of forcible entry and detainer is that, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by strong hand, violence or terror. In affording this remedy of restitution the object of the statute is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.[56]

The parties in *Pajuyo* were informal settlers on the public land which was the subject of said case. We ruled that since the government, which has title or better right over the property was not impleaded in the case, the Court cannot, on its own, evict the parties. We recognized better right of possession in favor of the petitioner therein who began occupying the disputed property ahead of the respondents in said case.

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[54] *Estrella v. Robles, Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60, 76.

[55] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

[56] *Id.* at 515-516, citing *Drilon v. Gaurana*, No. L-35482, April 30, 1987, 149 SCRA 342, 348.

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A case with parallel factual milieu is *Modesto v. Urbina*.[57] Like the spouses Marcelo, the respondents in said case relied on a MSA and tax declarations to substantiate their claim of possession over the contested land therein. In ruling for the petitioners in said case, the Court stressed that the mere declaration of land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession.[58] We explained that unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain, and its occupation, in the concept of owner, no matter how long, cannot confer ownership or possessory rights.[59] This finds support in Section 88 of the Public Land Act, which provides:

Section 88. The tract or tracts of land reserved under the provisions of Section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President.

In a Certification[60] dated June 8, 2006, Samson G. de Leon, the Regional Technical Director for Lands of the DENR-NCR stated that:

This is to certify that Lot 3976 Cad 299, Parañaque Cadastre situated at San Dionisio, Parañaque, Metro Manila, containing an area of 5,027.00 square meters has been verified based on available records of this Office to be under Project No. 25, classified as **Alienable or Disposable Public Land**, certified as such on **3 January 1968** per BFD L.C. Map No. 2323.

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This is to further certify that as per Certification dated 15 December 2005 issued by Records Officer II Anita B. Ibardolasa which is hereto attached, **no land patent has been issued over the same or any portion thereof**.

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[57] G.R. No. 189859, October 18, 2010, 633 SCRA 383.

[58] *Id.* at 402.

[59] *Id.* at 400.

[60] Records, Vol. 3, p. 719.

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x x x x. (Emphasis supplied.)

It is undisputed by the spouses Marcelo that the Silverios presently occupy those portions of Lot 3976 which are the subjects of the consolidated petitions before us. In particular, the Silverios tie their possession of the parcel at issue in G.R. No. 184490 to Florante Marcelo who appropriated a portion of Lot 3976 for himself, and with his wife, constructed a house thereon in 1986. As regards the portion of Lot 3976 subject of G.R. No. 184079, the Silverios have established their dwelling thereon in 1987 - long after Lot 3976 was classified as alienable and disposable public land on January 3, 1968.

Meanwhile, the spouses Marcelo insist on their better right to possess the contested parcels as holders of Tax Declaration No. E-008-19942 in the name of Ricardo Marcelo. Said tax declaration, which covers Lot 3976, was issued for the year 2005 and canceled Tax Declaration No. E-008-18821, also under the name of Ricardo Marcelo. Other than said tax declaration, however, we found nothing in the records of these cases to show that the spouses Marcelo have been consistently paying taxes on Lot 3976. We note that Tax Declaration No. E-008-19942 was issued fairly recently, and by itself, is inadequate to convince the Court that the spouses Marcelo have been in open, continuous and exclusive possession of the subject portions of Lot 3976, by themselves or through a successor-in-interest, since January 3, 1968. More importantly, it is ingrained in our jurisprudence that the mere declaration of a land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession.[61]

Considering that the Silverios are in actual possession of the subject portions of Lot 3976, they are entitled to remain on the property until a person who has a title or a better right lawfully ejects them. The ruling in this case, however, does not preclude the Silverios and the spouses Marcelo from introducing evidence and presenting arguments before the proper administrative agency

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[61] *Modesto v. Urbina*, *supra* note 57, at 402.

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to establish any right to which they may be entitled under the law.[62]

WHEREFORE, the Court **RESOLVES**:

(1) To **GRANT** the petition in G.R. No. 184079. The Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the Court of Appeals in CA-G.R. SP No. 98105 are **REVERSED and SET ASIDE**;

(2) To **DENY** the petition in G.R. No. 184490. Consequently, the Decision dated March 27, 2008 and Resolution dated September 1, 2008 of the Court of Appeals in CA-G.R SP No. 98713 are **AFFIRMED**; and

(3) To **DISMISS** the complaints for unlawful detainer filed by the spouses Ricardo and Evelyn Marcelo against Armando Silverio, Sr. and Remedios Silverio for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

Sereno, C.J. (Chairperson), see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

SERENO, *C.J.*:

Given the factual circumstances of these cases, I respectfully dissent from the finding that there is forum shopping, but *concur* with the ruling that Lot No. 3976 remains a public land.

As culled from the records, Lot No. 3976 is a property located in Philips St. Extension, Multinational Village, Barangay Moonwalk, Paranaque City, having an area of 5,020 square meters.[1] It was first thought to be part of a vast tract of land in Matatdo, Wawa, Paranaque, Rizal (Matatdo property), owned by Pedro

[62] See *Pajuyo v. Court of Appeals*, *supra* note 55, at 523.

[1] *Rollo* (G.R. No. 184079), p. 95; DENR Decision dated 11 July 2007, p. 1.

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Lumbos and tenanted by Graciano Marcelo, Sr.[2] When the entire Matatdo property was bought by a certain Mike Velarde, he developed it into what is now popularly known as the Multinational Village.[3] As part of the development, the Matatdo property was subjected to a resurvey, during which it was found out that Lot No. 3976 did not form part of the property bought by Mike Velarde and hence, is a public, alienable and disposable land.[4] This finding was confhmed by a Certification issued by the Department of Environment and Natural Resources (DENR) that on 3 January 1968, Lot No. 3976 had been classified as "Alienable or Disposable Public Land" per BFD L.C. Map No. 2323.[5] Consequently, Graciano Marcelo, Sr. and his heirs occupied and took actual possession of Lot No. 3976.[6]

On 30 September 1991, Spouses Ricardo and Evelyn Marcelo (Sps. Marcelo), as heirs of Graciano Marcelo, Sr., filed an unnumbered Miscellaneous Sales Application (MSA) with the DENR.[7] Prior to and pending the approval of the MSA, they had already been disposing of Lot No. 3976 by way of several Sales Contracts,[8] even without having formalized their ownership of the lot. As a result, the number of actual occupants of Lot No. 3976 increased. As of date, Sps. Marcelo occupy an area of approximately 50 square meters, while the remaining portions of Lot No. 3976 are occupied by 111 families. [9]

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[2] *Id.* at 96; DENR Decision dated 11 July 2007, p. 2.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 189; DENR Certification dated 8 June 2006.

[6] *Id.* at 96; DENR Decision dated 11 July 2007, p. 2.

[7] *Id.* at 241; DENR Memorandum dated 13 February 2007, issued by Corazon C. Davis, Regional Executive Director, DENR-National Capital Region, p. 4.

[8] *Id.* at 105; DENR Decision dated 11 July 2007, p. 11. The Sales Contracts refer to those contracted with the following persons, among others: Rowena Lanozo on 11 February 1993; Edgardo Marquez on 14 April 1986; Mssrs. Virgilio Bering and Alejandro Biclar on 29 June 1990; Nazario Robles on 4 May 1992; and Sps. Romeo Sanchez on 14 May 1996.

[9] *Id.* at 239; DENR Memorandum dated 13 February 2007 issued by Corazon C. Davis, Regional Executive Director, DENR-National Capital Region, p. 2.

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To legally acquire ownership of the portions of Lot No. 3976 that they were occupying, the occupants agreed among themselves to designate Ricardo Marcelo to file an MSA sometime in 1995. They contributed money and shared in the expenses for the application to prosper.[10] This MSA was opposed by the Heirs of Pedro Lombos, [11] resulting in a full-blown investigation and hearing by the DENR.

On 12 December 1996, the DENR rendered a Decision [12] in the following wise:

> WHEREFORE, premises considered, the Miscellaneous Sales Application/public land applications of Spouses Ricardo Marcelo *et al.*, should be, as it is hereby, GIVEN DUE COURSE, and the Opposition of Claimants-Oppositor Heirs of Pedro Lombos is DISMISSED for lack of merit.
>
> SO ORDERED.

In thus ruling, the DENR declared that Sps. Marcelo, through their predecessors-in-interest, had been "in possession/occupation of the lot in dispute since 1942 or time immemorial"[13] and hence, it was constrained to "grant subject Lot-3976, Cad-299, Paranaque Cadastre, Paranaque, Metro Manila, to Claimants-Applicants Ricardo Marcelo, *et al.*"[14]

By virtue of this Decision, Sps. Marcelo allegedly claimed exclusive ownership of the entire lot and filed several ejectment cases against the other occupants, including Spouses Remedios and Armando Silverio, Sr. (Sps. Silverio). [15]

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[10] *Id.* at 96-97; DENR Decision dated 11 July 2007, pp. 2-3.

[11] Docketed as *Ricardo Marcelo, et al., v. Heirs of Pedro Lombos, rep. by Atty. Fabian Lombos* under DENR-NCR Case No. 95-253, Re: Lot 3976, Cad-299, Parañaque, Metro Manila.

[12] *Rollo*, pp. 301-327. DENR Decision penned by OIC-Regional Executive Director Clarence L. Baguilat.

[13] *Id.* at 327; DENR Decision dated 12 December 1996, p. 27.

[14] *Id.*

[15] *Id.* at 97; DENR Decision dated 11 July 2007, p. 3.

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In response, a Formal Protest was filed by the *Sitio* Philips Paranaque Neighborhood Association, Inc. against Sps. Marcelo on 11 October 2004.[16]

A Decision[17] thereon was issued by the DENR on 11 July 2007, to wit:

WHEREFORE, all the foregoing premises considered, the Verified Protest filed on 11 October 2004 by Protestants, Sitio Philips Neighborhood Association, Inc., is hereby GRANTED with modifications. It is further ordered that:

1. The unnumbered Miscellaneous Sales Application of Protestees Spouses Ricardo and Evelyn Marcelo with respect to the Five Thousand Twenty square meters, should be, as it is hereby annulled and cancelled from the records;

2. Protestees are only entitled to the area they are actually occupying, that is, fifty (50) square meters, as per the findings of the investigation and ocular inspection conducted on the controverted property and thus may file their miscellaneous sales application with respect thereof; and

.3. Protestants may now file their application for the purchase of the land that they are occupying under miscellaneous sales. In connection therewith, the Regional Technical Director, Land Management Services, through the Chief, Land Management Division, is directed to evaluate the qualifications of the applicants *vis-a-vis* the applicable laws, rules and regulations thereon.

SO ORDERED. (Emphases and underscoring in the original)

In its Decision, the DENR stressed that "what was given due course in the Decision of this Office dated 12 December 1996 were the land applications of the other actual occupants-claimants and the miscellaneous sales application of Spouses Ricardo and Evelyn Marcelo and which was filed on 30 September 1991, or prior to the commencement of the case

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[16] *Id.* at 189; DENR Certification dated 8 June 2006.

[17] *Id.* at 95-110; DENR Decision penned by Regional Executive Director Corazon C. Davis.

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Ricardo Marcelo vs. Heirs of Lombos. However, Sps. Marcelo are only entitled to the portion they were actually occupying, as actual occupation is the basis of the grant, and the same cannot exceed One Thousand (1,000) square meters."[18]

Despite this clarification, Sps. Marcelo still pursued the ejectment cases they had earlier filed against the other occupants of Lot No. 3976. In particular, they filed two separate Complaints for unlawful detainer against the Sps. Silverio: (1) Civil Case No. 2004-271 (G.R. No. 184079) filed on 9 July 2004 before the Metropolitan Trial Court (MeTC), Paranaque City, Branch 78, involving a house which Sps. Silverio built on Lot No. 3976; and (2) Civil Case No. 2004-269 (G.R. No. 184490) filed on 14 August 2004 before the MeTC of Paranaque City, Branch 77, involving another house on Lot No. 3976 which the Sps. Silverio had taken over from their relatives. These were the cases that gave rise to the two conflicting Decisions issued by the Court of Appeals, subjects of this appeal.

Sps. Marcelo have not violated the rules on forum-shopping.

At the outset, we have defined forum-shopping as the act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or a special civil action for *certiorari,* or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. [19]

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[18] *Id.* at 108; DENR Decision dated 11 July 2007, p. 14.

[19] *HPS Software & Communication Corp. v. PLDT*, G.R. Nos. 170217 and 170694, 10 December 2012, citing *Metropolitan Bank and Trust Company v. International Exchange Bank*, G.R. Nos. 176008 & 176131, 10 August 2011, 655 SCRA 263, 274. See also *PHILPHARMAWEALTH, Inc. v. Pfizer, Inc. and Pfizer (Phils.), Inc.*, G.R. No. 167715, 17 November 2010, 635 SCRA 140; *Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Co., Inc.,* G.R. No. 167674, 17 June 2008, 554 SCRA 561, 569; *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, 7 June 2007, 523 SCRA 405, 416-417.

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For forum-shopping to exist, the following elements must be present: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[20]

On their face, the two Complaints filed by Sps. Marcelo seem to have an overwhelming identity of elements, for in both cases, the right to which they hinge their claim is their purported ownership of Lot No. 3976. This fact, however, cannot be used as ammunition to insist on a supposed violation of the rule on forum-shopping. It is clear that the parties entered into two separate contracts, thus signifying that there are also two separate causes of action.

In examining the two causes of action, we must compare the contracts entered into by the parties. In G.R. No. 184079, Sps. Marcelo alleged that Sps. Silverio were allowed to construct a house on Lot No. 3976 sometime in May 1987, on the condition that the latter would vacate the property the moment the former would need it. Meanwhile, in G.R. No. 184490, Sps. Marcelo also alleged that Sps. Silverio were allowed to stay in **another house** built in 1986 by Florante Marcelo and Marilou Silverio (but abandoned sometime in 1998), with the understanding that the house would be dismantled the moment Sps. Marcelo would need the premises.

Needless to say, the ownership of the entire Lot No. 3976 is immaterial. In each case, the contractual relations of the parties are confined only to certain portions of Lot No. 3976.

This view is further supported by the fact that the Sps. Marcelo have been disposing of Lot No. 3976 in small portions to different people. To uphold a finding of forum shopping would mean

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[20] *Pentacapital Investment Corp. v. Mahinay*, G.R. No. 171736, 5 July 2010, 623 SCRA 284, citing *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415 (2004).

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that Sps. Marcelo should file only one complaint against all the other occupants, on the premise that they are the owners of all those lots.

There is merit in the contention that this situation may be akin to that of condominium units, in which the owner-developer is given the right to eject each tenant separately. The rights and duties of both parties need not be reduced to a written contract, as long as the terms remain clear - that Sps. Silverio should vacate the two houses once Sps. Marcelo decided to use them. It therefore follows that there is no *res judicata,* for the finding of ownership in favor of Sps. Marcelo relegates their right to possess only the specific area, subject of each case.

To be. sure, the favorable Decision obtained by the Sps. Marcelo in G.R. No. 184079 only made reference to the area on which the house constructed by Sps. Silverio stands. The same is true with G.R. No. 184490, in which the MeTC limited its judgment to where the abandoned house was built.

Lot No. 3976 remains a public land and is without a registered owner.

Nevertheless, I *concur* with the *ponencia* on the finding that the entire Lot No. 3976 remains a public land.

To begin with, the findings of the DENR ought to be given weight, for factual matters relating to lands of the public domain rest within its competency.[21] This principle is in consonance with our long-held rule that findings of fact of an administrative agency are binding and conclusive upon this Court for as long as substantial evidence supports it.[22]

Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private

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[21] *Estrella v. Robles, Jr.*, G.R. No. 171029, 22 November 2007, 538 SCRA 60.

[22] *Perez v. Cruz*, 452 Phil. 597 (2003), citing *Bulilan v. Commission on Audit*, 360 Phil. 626, 634 (1998), *Villaflor v. Court of Appeals*, 345 Phil. 524, 562 (1997).

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person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable.[23] Failure of the applicant to overcome this threshold retains the property within the public realm.

As clarified on record, Lot No. 3976 is still a public land, and no land patent has been issued over it as a whole or over any portion thereof. The unnumbered MSA filed by Sps. Marcelo on 30 September 1991 has already been cancelled by the DENR in a Decision dated 11 July 2007 for violating Section 2 of Republic Act No. 730,[24] and for not complying with the requirements of Commonwealth Act No. 141.[25] Hence, the lot has no registered owner.

Coming now to the merits of the case, well-settled is the rule that in an ejectment suit, the only issue is possession *de facto* or physical or material possession, and not possession *de jure*. So that even if the question of ownership is raised in the pleadings, as in this case, the court may pass upon such issue but only to determine the question of possession, especially if the former is inseparably linked with the latter.[26] Article 539 of the Civil Code states:

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[23] *Republic v. Medida*, G.R. No. 195097, 13 August 2012, 678 SCRA 317, citing *Republic v. Dela Paz*, G.R. No. 171631, 15 November 2010, 634 SCRA 610, 621-622.

[24] *Rollo*, p. 108; DENR Decision dated 11 July 2007. The relevant portion of R.A. 730, Sec. 2 provides: Except in favor of the Government or any of its branches, units, or institutions lands acquired under the provisions of this Act shall not be subject to encumbrance or alienation before the patent is issued and for a term of ten years from the date of the issuance of such patent, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. x x x

[25] *Id.* at 106.

[26] *Dizon v. Court of Appeals*, 332 Phil. 429 (1996). See also *Del Rosario v. Court of Appeals*, 311 Phil. 589; *Mediran v. Villanueva*, 37 Phil. 752; *Somodio v. Court of Appeals*, 235 SCRA 307; *De Luna v. Court of Appeals*, 212 SCRA 276; *Oblea v. Court of Appeals*, 313 Phil. 804 (1995); *Joven v. Court of Appeals*, 212 SCRA 700.

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Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

Thus, possessors, whether in the concept of owners or holders, must be respected anent their right to possess. In *Hermitaño v. Clarito*,[27] we have held thus:

The plaintiff was entitled to have this possession respected until such time as he might have been defeated in the proper action, even if it be true that the deed by which the land was conveyed to him was void. **Even if he had been absolutely without title, with nothing more than the naked possession *de facto* of the land, under Article 446 of the Civil Code he was entitled to have this possession respected.** (Emphasis ours)

It is not denied that Sps. Silverio are currently in actual possession of the area in Lot No. 3976 where the two houses stand, while Sps. Marcelo occupy only 50 square meters thereof. This has been the situation for more than 30 years.[28] Thus, absent any party claiming to have a better right to lawfully eject them, Sps. Silverio ought to remain on the property. Such a consequence is not new and has been passed upon by the Court in *Pajuyo v. Court of Appeals*,[29] in which it ruled:

We are aware of our pronouncement in cases where we declared that "squatters and intruders who clandestinely enter into titled government property cannot, by such act, acquire any legal right to said property." We made this declaration because the person who had title or who had the right to legal possession over the disputed property was a party in the ejectment suit and that party instituted the case against squatters or usurpers.

x x x x x x x x x

Since the party that has title or a better right over the property is not impleaded in this case, we cannot evict on our own the parties.

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[27] 1 Phil. 609, 613 (1902).

[28] *Rollo*, p. 33; Petition for Review on *Certiorari* (G.R. No. 184079), p. 10.

[29] G.R. No. 146364, 3 June 2004, 430 SCRA 492, 523-524.

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Such a ruling would discourage squatters from seeking the aid of the courts in settling the issue of physical possession. Stripping both the plaintiff and the defendant of possession just because they are squatters would have the same dangerous implications as the application of the principle of *pari delicto*. Squatters would then rather settle the issue of physical possession among. themselves than seek relief from the courts if the plaintiff and defendant in the ejectment case would both stand to lose possession of the disputed property. This would subvert the policy underlying actions for recovery of possession.

Since Pajuyo has in his favor priority in time in holding the property, he is entitled to remain on the property until a person who has title or a better right lawfully ejects him. Guevarra is certainly not that person. The ruling in this case, however, does not preclude Pajuyo and Guevarra from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law.

In no way should our ruling in this case be interpreted to condone squatting. The ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership. The owner can still go to court to recover lawfully the property from the person who holds the property without legal title. Our ruling here does not diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal or unauthorized structures in accordance with existing laws. (Emphases supplied)

The rationale behind this ruling was already explained by the Court: "It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order." [30] In fact, even a wrongful possessor may at times be upheld by the courts, though only temporarily and for the purpose of maintaining public order.[31] The larger and permanent interests

[30] *Mediran v. Villanueva*, 37 Phil. 752, 757 (1918).

[31] *Manuel v. Court of Appeals*, 276 Phil. 657 (1991).

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of property require that in such rare and exceptional instance, the courts must give preference to and permit actual but wrongful possession. [32]

Consequently, I agree with the *ponencia* that the disposition in these cases does not preclude any person from asserting title or better right so as to lawfully eject the Sps. Silverio from the property.

WHEREFORE, I vote to **DISMISS** the Complaints for unlawful detainer filed by Spouses Ricardo and Evelyn Marcelo against Spouses Armando Silverio, Sr., and Remedios Silverio for lack of merit.

FIRST DIVISION

[G.R. No. 185518. April 17, 2013]

SPOUSES FELIX CHINGKOE AND ROSITA CHINGKOE, *petitioners, vs.* **SPOUSES FAUSTINO CHINGKOE AND GLORIA CHINGKOE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; THE COURT MAY TAKE JUDICIAL NOTICE OF THE RECORDS OF A PRIOR CASE IN THE RESOLUTION OF A CASE PENDING BEFORE IT; APPLICATION.— [I]n *Republic v. Sandiganbayan*, [The Court ruled]: "As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge

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[32] *Id.*