

**RESOLUTION**

June 5, 1991

**Certified true copy**

**REPUBLIC OF THE PHILIPPINES**  
**REGIONAL TRIAL COURT**  
National Capital Judicial Region  
Branch 111, Pasay City

**WILSON ORFINADA**

Plaintiffs

-VS-

MACARIO F. RODRIGUEZ ET AL  
THE HEIRS OF DON MIGUEL AND  
HERMOGENEZ ANTONIO RODRIGUEZ  
DOÑA AURORA FABELA Y CORDOVA  
PATRICIA TIONGSON/RICARDO and  
SEVERINO MANOTOK  
PONCIANO/DR NICANOR PADILLA  
CONRADO POTENCIANO & HEIRS  
FELIMON AGUILAR/MANNY VILLAR & CO.  
FORTUNATIO SANTIAGO AND MARIA  
PANTANILLA P. SANTIAGO AND HEIRS  
MARCOS ESTANISLAO AND MAURICIO  
DE LOS SANTOS/HARRY STONEHILL  
ANTONIO/EULALIA RAGUA  
DON MARIANO SAN PEDRO Y ESTEBAN  
AND MARIA SOCORRO CONDRADO HEIRS  
THE HEIRS OF FLORENCIA RODRIGUEZ  
DON ESTEBAN BENITEZ TALLANO, ET. AL.  
PEDRO GREGORIO/ AGAPITO BONSON  
AND HEIRS/ BALBINO FRANCISCO  
PEDRO ROJAS ESTATE AND HEIRS  
EUGENIO MARCELO/ JUAN JOSEF  
SANTIAGO GARCIA AND HEIRS  
MARIANO NONES AND HEIRS  
ORTIGAS AND COMPANY PARTNERSHIP/  
THE AYALA Y CIA AND CO., THE V.V.  
SOLIVEN REALTY AND CO., INC.,  
JOSE YAO CAMPOS AND COMPANY  
GREGORIO ATANETA AND CO., INC.,  
THE ADMINISTRATOR OF PASAY AND  
TRIPLE ESTATES / AND THE MARICABAN  
ESTATE/ THE MUNTILUPA ESTATE  
THE TANAY-BARAS ESTATE UNDER CLAIMS  
OF SEVERAL INTRUDERS/POACHERS/ILLEGAL  
OCCUPANTS/PERPETUA AND PERFECTO  
AQUINO, ET. AL., ANTONIO FAED THE  
ADMINISTRATOR OF SAN PEDRO ESTATE/  
JOSE SALVADOR/MAGNO FERNANDEZ/  
CANDIDA DE GUIA AND HER TENANTS

**CIVIL CASE NO. 3957-P**

For: Quieting of Titles/  
Reconveyance of Real  
Properties with  
Reconstitution of OCT No  
01-4 in the name  
of Prince Lacan Ulrijal  
Bolkiah (Tagean) Tallano  
TCT No. T498 in the name  
of Don Estaeban Benitez  
Tallano and TCT No. T408  
in the name of Don Gregorio  
Madrigal Acop in accor-  
dance with R.A. 26

HARRY STONEHILLS/TRUSTEE/MORGAGEE  
DOÑA DOLORES OCHOA CASAL AND  
DELFIN CASAL ET AL/SIMONA ESTATE  
AND THE HEIRS/EXEQUIEL DELA CRUZ  
AND HEIRS/ GERVACIO LOMBO,  
FRANCISCO SORIANO /QUINTIN MEJIA/  
JUANA CRUZ AND HEIRS/ GABINO JAVIER  
AND HEIRS /THE MODESTO, EULALIO, TOMAS  
APLONIO, PEDRO, FRANCISCO, AND  
ANTONIO CRUZ, OCTAVIO V. CRUZ AND HEIRS  
CANTALCIO J. ANNIANA AND HEIRS  
GALAXIE AGRO INDUSTRIAL CORPORATION &  
IT'S PRESIDENT/STOCK HOLDERS  
MISAEAL VERA JR. DEVELOPER & ITS OWNERS  
TAN YU AND HEIRS/ ADMINISTRATOR  
MILESTONE FARM, INC & ITS OWNERS  
JOSE INGAL AND THE HEIRS  
ASSOCIATED BANKING CORPORATION & OWNERS  
PBCOM & ITS PRESIDENT/ STOCK HOLDERS  
GUZMAN AGRON INDUSTRIAL CORP.  
RFM AND ITS OWNER/ ADMINISTRATOR  
RAFAEL SARAO/ JOSE OLIVER AND THE HEIRS  
DOMINADOR DE OCAMPO BUHAIN, ET. AL.  
MANUEL QUIOGUE, ESTANISLAO,  
EDUARDO AND BERNABE CARDOSO AND  
THE HEIRS, ANTONIO AQUIAL,  
FELIX AND CLAUDIO OSORIO AND HEIRS  
REGINO DELA CRUZ/ GIL SANTIAGO  
MARCIANO TUAZON AND J. TUAZON AND  
COMPANY, JULIAN AND JUAN FRANCISCO  
SARAO MOTORS/ FRANCISCO MOTORS CORP.  
PHILIPPINES SHARE COMPANY  
PILAR DEVELOPMENT CORPORATION  
CORNELIO BERING/ YANCO BERING ET AL  
DR. FRANCISCO Y. PANOL/ AND ALL PERSONS  
UNDER THEM/ VICENTE BAYAN AND THE HEIRS/  
ANGEL AND CRISOSTOMO BAUTISTA AND HEIRS  
FAIRLAND DEV. CORPORATION AND HON CITY  
MAYOR JUN SIMON AND CITY GOVT. OF Q.C.  
TEODORO LIM, FELIX BAEZ AND HEIRS  
VALINTINO GAJUDO/ CANDIDO CLEOFAS  
PHILCOMSAT CORPORATION AND  
LIBERTY MINES, INC. AND ITS  
PRESIDENT/ ADMINISTRATOR TOGETHER WITH  
IT'S DESIGNATED SECURITY FORCE OF ANY CLASS  
THE PHILIPPINE NATIONAL BANK & ITS PRESIDENT  
FORT WILLIAM MCKINLEY AND THE  
MANILA RAILROAD COMPANY  
UNIVERSITY OF THE PHILIPPINES  
THRU HONORABLE SOLICITOR GENERAL/  
THE DENR AND THE COMMISSIONER OF LAND

REGISTRATION COMMISSION/THE REGISTER  
OF DEEDS OF ANGELES CITY/HON. REGISTER OF  
OF DEEDS OF BAGUIO CITY/CITY GOVT OF MLA  
THE CITY GOVT. OF BAGUIO/THE CITY GOVT.  
OF PASAY ANDMAYOR PABLO CUNETA/  
THE PROV. GOVT. OF CAVITE/THE MUN GOVT.  
OF DASMARIÑAS/THE MUN GOVT OF IMUS, CAVITE  
THE MUN GOVT. OF BACCOOR/THE CITY GOVT.  
AND THE HON. REGISTER OF DEEDS OF  
TAGAYTAY OF CAVITE PROVINCE  
THE HON, MAYOR AND CITY GOVT. OF PALAYAN  
THE PROV. GOVT. OF PALAWAN  
THE HON. ADMINISTRATOR OF MMDA  
THE HONORABLE DIRECTOR OF BUREAU  
OF LANDS. THE DEPT OF PUBLIC WORK AND  
HIGHWAY/THE REPUBLIC OF THE PHILIPPINES  
**AND TO ALL WHOM IT MAY CONCERN**

**Defendants**

DON ANNACLETO MADRIGAL ACOP  
PTINCE JULIAN MORDEN TALLANO  
**DEFENDANTS/INTERVENORS**

X-----X

**RESOLUTION**

The Third Party Claimant, Hon. City Mayor of Pasay, Pablo Cuneta by counsel, Atty. Edisteo Soriano, alleges that the lot containing an area of 3,000 square meters, portion of Seventy Thousand, (70,000) square meters located along Kalayaan Road, Nichols Airbase, Barangay Merville, now Kalayaan Street, Barangay Villamor Air Base, Pasay City, where his client had planned to construct 22 units of townhouses had been donated to his Client, Pasay City Mayor, Pablo Cuneta on January 17, 1985, by the Tala Estate thru it Court Appointed Judicial Administrator, Benito Agustin Tallano, in gratitude of services and cooperation the latter had rendered for a period of five years. That since that time the good mayor had establish with peaceable possession of said lands as owner thereof untio the later part of February 16, 1988, on which date the heir of the donor, as newly appointed Judicail Administrator of the said Tala Estate, PRINCE JULIAN MORDEN TALLANO, without authority and permission to do so, ousted him from his possession, and notified the renters of the land beginning from that date henceforth they were to recognize him, the immediate heir, as owner of the lands, in his capacity as Curt Appointed Judicial Administrator being the rightful party entitled for the rental payment and or any fruits of the lot the tenants has been occupying.

Upon these un-denied facts, and availing himself, as Third party Claimant, of the action of restitutory interdict, the third party claimant prayed to the court that he be restored to the possession of the land from which he had been ousted and that the heir be adjudge to the payment of exemplary and compensatory damages the costs of the action in his favour with contempt of court.

The complaint was filed on 20th of January 1989, in this Sala and contained therein a description of the land in question as to its area, location, and boundaries.

The action having been prosecuted through its various stages, the Regional Trial Court rendered judgment in favour of the INTERVENORS/RESPONDENT, Court Appointed Judicial Administrator, granted him the relief prayed similarly with the claimant for by restitutory interdict, together with other relief proper in the premises, against which judgment the third party claimant appealed for reconsideration to this court.

The Intervenor/Heir of DON GREGORIO MADRIGAL ACOP, in the pre-liminary hearings, testified that what his father had donated was a lot containing around 3,000 square meters, an integral portion of 27,000 square meters of commercial lot, portion of the tala estate evidenced by TCT No. T 408 registered in the name of Don Gregorio Madrigal Acop, located along Ekipanio Delos Santos Avenue Ext. more or less, around forty to fifty (50) meters distance descending toward North from Roxas Boulevard, Pasay City, which factually indicated herein from point 1 to point 2 bounded on the East by Cuneta Avenue along F. B. Harrison traversing at a distance of 14.40 meters bounded on the West by P. Lovina Avenue and on point 2 to point 3 Along P. Lovina Avenue traversing at 208.4 meters bounded on the North by P. Calle Angeles traversing at 14.40 meters more or less, and from point 4 to point 1 point of beginning bounded on the West by Cuneta Avenue and on the South by F. B. Harisson traversing at 208.4 meters, containing an area of 3,000 square meters, more or less, as reflected in the DEED OF DONATION duly executed by said Benito Agustin tallano for and in favour of said Mayor Pablo Cuneta as shown by Annex 1 of the intervenor's position paper. Several witnesses of both parties testified at the trial, all of five witnesses including Surveyor Miranda, who prepared the location plan after an ocular inspection had conducted having una-nimously affirmend fatual information related in the complaint are fallacies in particular, because it contradict the DEED OF DONATION in favour of said Mayor Pablo Cuneta that was executed by the donor, predecessor of the herein INTERVENOR.

Both party with respect to the ownership of the heir of the donor over the estate and peaceable possession of the third party claimant to the lot pertaining to the ouster by the INTERVENOR to the claimant, Mayor Pablo Cuneta, had agreed to settle controversy and they entered into stipulation that the land containing an area of 3,000 square meters, portion of Seventy Thousand, (70,000) square meters located along Kalayaan Road, Nichols Air Base, Barangay Merville, now Kalayaan Street, Barangay Villanor Air Base, Pasay City, and as expressed their conformity, the latter who had been in possession of the land since the date on which he made demand upon the tenants located in Kalayaan Street, Barangay Merville, will revert the same real property to the former, Heir of the Donor, being the legitimate owner of the land. And to deal with the former in all matters pertaining to the claims and illegal squatting including building any structure to the land, while the real property indicated along the Cuneta

Avenue, which is formerly Queen Lilieloukalani Avenue, will likewise turn over to the said THIRD PARTY CLAIMANT, which was already covered by stipulation hereof, subject to the following conditions, to wit:

That the Third Party claimant, in the person of City Mayor of Pasay, who introduced tolerance attitude to the squatting and illegal occupants and various structures in the area, Barangay Merville, Kalayaan street, Pasay City, has been required by this Court to clear the subject premises from squatters and or illegal structures, except, those who are willing to rent or own the area by paying monthly rental of no less that Php20.00 per square meter or at the selling price of Php3,000.00 per square meter for a total of Php9 million on 60 equal monthly installment, otherwise, when failed and any violation hereof, the Third party Claimant, his successor or interest, transferee, vendee, mortgagee and or his subordinate, if any there be, will be responsible to pay an awarded damages of ten per centum of the total price of the lot monthly until compliance to the compromise agreement has been fully satisfied with for and in favour of the TALA ESTATE HEIRS.

While the INTERVENOR had expressed his willingness to guaranty the possession of the Third party Claimant free from the claim of other party who might be enjoyed the conveyance of the said lot from his predecessor, otherwise, an awarded damages amounting to the ten per centum of the cost of the land shall reimbursed by the INTERVENOR to the said party until the area has been cleared from said claim emanated from the commitment of his predecessor.

In this instant case the Court have to enforce the virtue of *UBI EADEM EST RATIO, IBE EST EADEM LEGIS DISPOSITIO*. For ownership is the right to enjoy and dispose of a thing, without further limitations than those imposed by law. The owner has the right of action against the holder and the possessor of the thing in order to recover it. (Spanish Civil Code, Article 348, CF New Civil Code of the Philippines, Article 428) *Abusus no tollit usum*. Yet, under the law the essential elements of full ownership (*dominio pleno*) in general are: (1) *Jus Disponendi et Abutendi*-right to dispose, transform or destroy (2) *Jus Utendi*-right to use (3) *Jus Fruendi*-right to receive the fruits (4) *Jus Vendicandi*-right to recover.

Under the New Civil Code (R.A. 386) the essential elements of full ownership are found in Art. 428, 429 and 440, namely:

- a) The right to dispose-(Art. 428, 1st par.) which includes:
  - 1) The right to alienate or transfer-(such by sale or exchange)
  - 2) The right to charge or encumber (such as by mortgage, etc.)
  - 3) The right to transform or destroy-such as renovations, raising, extending, demolishing, rebuilding
- b) The right to enjoy (Art. 428 par. 1) which includes

- a) the right to use
- b) the right to receive fruit, which may be natural, civil or industrial fruit (Art. 441 and 442 of the Civil Code)
- c) the right to abuse-the right to destroy
- c) The right to Recover-if the property is unjustly possessed by another (U.S. vs. CAUSBY, 382 U. S. 256)
- d) The right to exclude-(Art. 429) which allows the owner to:
  - 1) Use force (Art. 429) as may be reasonably-necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.
  - 2) To enclose it- (Art. 430) Every owner may enclose or fence his land or tenement by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitude constituted thereon.

With the above provisions of the Civil Code and doctrine on property rights, it is too apparent that the intervenor was the source of glory that the good Mayor has been enjoying after the testimonies of another witnesses that the good mayor exploiting the land containing an area of 70,000 square meters located in the premises of Barangay Merville, Kalayaan Street, Pasay City, entrusted to him by the intervenor's predecessor for conservation and security which portraits by that purview of dishonesty and unworthy returns the trustee took advantage of the leniency of the donor. The truth of all, all of these witnesses who were allies to the mayor, had able to recall the exact date of the ouster--affirming, such incident committed by the land owner/intervenor was justified by legitimate reasons outside the province of inhumane offences. This however, the incident, took place not so long ago during the attempt of the complainant, to own the subject real property by the use of his power being City Mayor of Pasay. He did the dredging of foundation of the 22 units of town houses, which diminish the probity force of his defence against the testimony of said witnesses for the purpose of proving the facts upon which the complaint is based, because, considering this testimony in relation with that of the other witnesses, who affirmed that the ouster was effected because of the presence of construction materials and of continuous engineering works in the area beyond control of the true owner caused the application for the issuance of Prohibitory Mandatory Injunction with Writ of Mandamus enjoining the Contractor and the good Mayor and his City Engineer to refrain from building said proposed-on going town houses project undertaking in lieu of immediate arrest to any body, who defy the Court Order to be enforced by virtue of Writ of Mandamus.

Furthermore, we can not afford to fail and conclude that the offence of the Claimant has not sufficiently been proven; by reason of substantial evidences besides all the witnesses refer to the same acts, with the testimony of each serving to corroborate that of the others.

The ceding of the land in questioned by the INTERVENOR's predecessor to the party claimant has also been proven by a certified document, embracing real property located along Cuneta Avenue and not in Kalayaan Street, because said real property located in Kalayaan Street is eligibly own by the herein Intervenor, which supplement as well the firm stand of said intervenor against the wrong claim of the Third Party Claimant, directly subsidizes the grounds and cause of action of the complaint, inasmuch as it demonstrates the origin of the possession other than what it alleged by the third party claimant but pertub the value of what have been enjoyed by him as mere usuper if not illegal occupant.

The INTERVENOR does not deny the facts alleged in the complaint, but on the contrary, he disown by the essence of truth the subject land had merely been in possession of the third party claimant in a short period of time by tolerance of the true owner. Unlike what the claimant had allege that *the act which occasioned the ouster of the claimant from the subject lot being cultivator since time immemorial was by dominant force, is time and again will speak for the truth, said land is poriton of the Tala Estate since time immemorial and even before in the advent of the Spaniard.* It was for the same reason, foubtless so to speak, that the Third Party Claimant offered no evidence whatsoever to contain that of the INTERVENOR'S ownership rights and interest, with respect to the fact of latter's possession of the land ousted by the lawful owner.

It is very incontrovertible the true date were the first mentioned, the result would be that when the complaint was filed, on February 16, 1988, more than two (2) years had gone which prescribed since hte date of the ouster, in which case the action for the recovery of the possession by means of restitutory interdict would have been barred by the statute of limitations, which means the summary action of restitutory interdict. (WRIT OF RECOVEY OR POSSESSION) will lie only against one who has ousted the rightful possessor and not against third person who have received delivery of the possession from the ousting party. Consequently the complaint would have been dismissed, in accordance. with the establishec provisions of the Code of Civil Procedure and jurisprudence Such, in effect, is the defence upon which the intervenor principally relies to destroy the action instituted by the complaint on the issue of prescription and no legal personality neither clear legal right ot file said complaint. LEX NON COGIT AD IMPOSSIBILIA (Mara vs. Quimpo, 12811-SP, Sept. 30, 1981. LEX NON PRAECIPIT INUTLLA, QUIA INUTILLIS LABOIR STULTUS-The law frowns upon useless ceremony-Samzon vs. Calleja 24548-R Sept. 29, 1959.)

Furthermore, it is self-evident that the ownership issue embracing the same real property had been long resoved on February 4, 1972 *per se*, in an LRC/CIVIL Case No. 3957-P, where the said right of the complainant had been settled as well designating said subject lot along Cuneta Avenue, in his favour yet, could have produced the effect de facto of depriving the eintervenor's possession over the real property in question. To that end it was mandatory the resolution resolving the differences be executed with some subsequent judicial impositions which act would be a



relieve to the one who suffered damages and injury inflicted upon by the party with vested interest.

The INTERVENOR in the second place alleges that the conveyance of the land by HIS PREDECESSOR to the COMPLAINANT was void, and therefore would produce no legal effect, which appear in the record, expressly prohibit the alienation of any portion of said real property for any cause whatsoever, when contradictory to what really designated or awarded.

The INTERVENOR 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 of donation by which the land was conveyed to him was not 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 be respected, in as much as the claim of the complainant/claimant found entirely different from what it stated in the DEED OF DONATION.

By virtue of the principle lent by the Code of Civil Procedure provides a remedy by restitution interdict not only to a possessor evidenced by a more or less valid title, but even to the extent to those who have only the naked possession, if they are despoiled thereof. For the purpose of directing restitution or with Writ of Recovery, in such a case it is unwarranted to consider anything further than the fact of the possession and the ouster. Hence no evidence should be admitted in the trial on the merit other than that referring to these two valid judicial wisdoms, and any evidence not pertaining nor should falling to these issues be denied by the court on its own motion. (Arts. 1633, 1634, and 1638.)

Wherefore, to affirm the motion for reconsideration is a grave misuse of the law and jurisprudence which dragged this Court into no option, yet, said motion has been dismissed with the awarded damages against the movant/Third party Claimant or his successor or interest and with ORDER to vacate the premises applying the virtue of OMNIBUS ORDER of December 20, 1990 against them, otherwise, when due after fifteen (15) years moratorium, which this resolution reiterates, the SPECIAL WRIT OF EXECUTION AND WRIT FO MANDAMUS becomes enforceable within five (5) years commencing January 1, 2006.

The BRANCH SHERIFF/his deputized and Court appointed private sheriff has been mandated to enforce this resolution and said WRIT OF MANDAMUS of Dec. 20, 1990.

SO ORDERED

Pasay City, June 5, 1991

  
(S.C.J.) SOFRONIO C. SAYO  
Presiding Judge