Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

AURORA TENSUAN, HEIRS OF DIONISIA TENSUAN, HEIRS OF JOSE TENSUAN, ANITA TENSUAN, HEIRS OF LEYDA TENSUAN, HEIRS OF FRANCISCO TENSUAN, and RICARDO TENSUAN, Represented by AMPARO S. TENSUAN, as Attorney-in-Fact,
Petitioners,

- versus -

HEIRS OF MA. ISABEL M. VASQUEZ,
Respondents.

G.R. No. 204992

Members:

PERALTA, *C.J., Chairperson,*
CAGUIOA,
REYES, J.C., JR.,
LAZARO-JAVIER, *and*
LOPEZ, *JJ.*

Promulgated:

SEP 08 2020

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Petitioners Aurora Tensuan, Heirs of Dionisia Tensuan, Heirs of Jose Tensuan, Anita Tensuan, Heirs of Leyda Tensuan, Heirs of Francisco Tensuan and Ricardo Tensuan assail the following dispositions of the Court of Appeals in CA-G.R. CV No. 96671 entitled *"Aurora Tensuan, Heirs of Dionisia Tensuan, Heirs of Jose Tensuan, Anita Tensuan, Heirs of Leyda Tensuan, Heirs of Francisco Tensuan, and Ricardo Tensuan, Represented by Amparo S. Tensuan as Attorney-in-Fact v. The Heirs of Maria Isabel M. Vasquez:"*

1. Resolution[1] dated July 4, 2012 which reversed and set aside the February 24, 2012 Decision and affirmed the November 30, 2010 Order of the trial court dismissing the case on ground that petitioners' cause of action had already prescribed; and

2. Resolution[2] dated December 20, 2012 denying reconsideration.

Antecedents

In their Complaint[3] dated October 7, 1997,[4] petitioners sued respondent Ma. Isabel M. Vasquez in Civil Case No. 98-286 for *accion reivindicatoria* and annulment of title. Petitioners essentially alleged:

Fernando Tensuan was the registered owner of a parcel of land with an area of 32,862 square meters, more or less, located in Poblacion, Muntinlupa City, and covered by Transfer Certificate of Title (TCT) 16532 issued on January 7, 1950.[5] Following Fernando's death on May 19, 1976, they (petitioners) as surviving heirs executed an Extra-Judicial Settlement[6] and had it annotated on the dorsal portion of TCT No. 16532.[7]

On the other hand, respondent Ma. Isabel M. Vasquez was the owner of a parcel of land located in Bagbagan, Tunasan, Muntinlupa City which was converted into a subdivision known as the Aguila Village. The Magdaong River served as the boundary between the Tensuan property and the Aguila Village.[8]

Sometime in the 1990s, Ma. Isabel commissioned the rip-rapping of the northern side of her property. This affected the flow of the Magdaong River, causing it to course through the southern portion of their property.[9] Anita Tensuan immediately brought the matter to the attention of City Engineer Roberto Bunyi (Engr. Bunyi) who, in the presence of representatives from both parties,[10] conducted Joint Verification Survey VS-00-00368 from April 22-25, 1995.[11]

Engr. Bunyi discovered that the rip-rapping was done pursuant to Special Work Order 13-000271 supposedly issued by the Muntinlupa Estate, Rizal CLRO No. 19981 in 1986. As it was though, Special Work Order 13-000271 covered not just the contour of the Magdaong River, but also a portion of the Magdaong River itself. More, as a result of the rip-rapping, the

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[1] *Rollo*, pp. 331-344.
[2] *Id.* at 388-393.
[3] *Id.* at 53-57.
[4] Filed on December 17, 1998.
[5] *Rollo*, p. 155.
[6] *Id.* at 11.
[7] *Id.* at 348.
[8] *Id.* at 156.
[9] *Id.* at 155-156.
[10] Engr. Rodrigo Marcelo for petitioners and Engr. Raul Dequina for respondent.
[11] *Rollo*, p. 159.

Magdaong River changed its course and augmented the original area of Ma. Isabel's property by 5,237.53 square meters. Subsequently, on November 25, 1986,[12] she was issued TCT 144017 covering this additional area.

But out of this new area, 1,680.92 square meters were actually a portion of their property while 3,556.62 square meters were actually a portion of the Magdaong River. Ma. Isabel subsequently caused the subdivision of the entire 5,237.53 square meters.[13] As a result, TCT 144017 produced seven (7) derivative TCTs.[14]

Her illegal act of incorporating a portion of their property into her new title or titles deprived them of their ownership and possession thereof. Too, the rip-rapping created a new course for the Magdaong River and now posed an imminent danger to their lives and property. They, therefore, sought relief to restore their property, declare as void Special Work Order 13-000271, TCT No. 144017 and the seven (7) derivative TCTs, and restore the Magdaong River to the State.[15]

The case was raffled to the Regional Trial Court (RTC) – Branch 256, Muntinlupa.

In her Answer[16] dated March 19, 1999, respondent **Ma. Isabel M. Vasquez** denied encroaching on petitioners' property. She averred that pursuant to Special Work Order 13-000271 approved on September 11, 1986, she commissioned the rip-rapping activity on her property to prevent its erosion. The rip-rapping followed the contour of the Magdaong River. Thereafter, TCT No. 144017 was issued in her name on November 25, 1986 based on the same Special Work Order 13-000271.

She further asserted that even granting for the sake of argument that a portion of the Magdaong River was erroneously included in her title, petitioners do not have the legal personality to ask for its reversion because the river is part of the public domain. She claimed moral damages of ₱1,000,000.00,[17] attorney's fees of ₱500,000.00, litigation expenses of ₱20,000.00, and ₱2,000.00 as appearance fee per court attendance.

During the trial, **Amparo Tensuan** testified that she caused Joint Verification Survey VS-00-00368 to be approved by the Chief Regional Survey Division. Through the survey, it was discovered that Ma. Isabel

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[12] *Id.* at 400.
[13] *Id.* at 457-458.
[14] Transfer Certificate of Title No. 180014 – 3,701 sqms.
Transfer Certificate of Title No. 180015 – 512 sqms.
Transfer Certificate of Title No. 180016 – 100 sqms.
Transfer Certificate of Title No. 180017 – 100 sqms.
Transfer Certificate of Title No. 180018 – 100 sqms.
Transfer Certificate of Title No. 180019 – 100 sqms.
Transfer Certificate of Title No. 180020 – 622 sqms.
[15] *Rollo*, pp. 458-460.
[16] *Id.* at 75-79.
[17] On the ground that the complaint was obviously intended to harass and embarrass her, caused her mental anguish, serious anxiety, besmirched reputation and social humiliation.

encroached on their property by 1,680.92 square meters. They confirmed this through another survey performed by Engineer Rodrigo Marcelo (Engr. Marcelo) on August 8, 1997. Due to rains, however, the encroachment on their property increased from 1,680.92[18] square meters to 2,165.73 square meters per survey plan dated February 19, 2000.[19] They tried to stop Ma. Isabel's employees' rip-rapping activity but they were subdued by her armed security guards.[20]

Geodetic Engr. Marcelo testified that petitioners engaged his services for the Joint Verification Survey VS-00-00368 done on April 22-25, 1995. During the survey, it was discovered that respondent encroached on petitioners' property by 1,680.92[21] square meters. Respondent's representative Engineer Raul Dequina (Engr. Dequina) and Engr. Bunyi from the City Engineer's Office of Muntinlupa City were also present during the Joint Verification Survey.

On August 8, 1997, petitioners requested an updated survey on the size of the encroachment. The results confirmed the same 1,680.92 square meter encroachment. On February 19, 2000, petitioners engaged his services anew. This time, the results revealed that the encroachment increased to 2,165.73 square meters.[22] The August 8, 1997 and February 19, 2000 surveys, however, were not approved by the Chief Regional Survey Division.

City Engineer **Bunyi** testified and confirmed that a Joint Verification Survey was conducted and the same was participated in by Engr. Marcelo on behalf of petitioners and Engr. Dequina on behalf of Ma Isabel.[23] By letter dated June 2, 1995, he referred the matter to Atty. Roqueza de Castro of the Land Management Sector but the same was not acted upon.

For her part, **Ma. Isabel Vasquez** testified on the allegations in her Answer. She also presented **Engineer Nelson Samson**[24] who testified that he had been the Property Manager of the Vasquez Madrigal Group of Companies since 1999. He explained that rip-rapping is the construction or concreting of the river walls to protect the soil from erosion especially along the riverbanks. The Special Work Order, on the other hand, is issued by the surveyor as reference for construction of areas surveyed and served as the basis for rip-rapping.

The following steps should be accomplished before rip-rapping can be done; prepare a plan, secure a survey location and layout of the property, and secure the necessary permit from the City Engineer's Office. Here, Geodetic Engineer Jaime Beniret conducted the survey which was approved by the Regional Director of the Bureau of Lands in 1984. The survey referred to the

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[18] 1,780.92 per the RTC Decision (*rollo*, p. 158) but 1,680.92 in the Complaint (*id.* at 55).
[19] *Id.* at 158.
[20] *Id.* at 159.
[21] 1,780.92 per the RTC Decision (*id.* at 159).
[22] *Id.*
[23] *Id.* at 160.
[24] *Id.* at 160-161.

property described in Special Work Order 13-000271 with an area of 5,325 square meters. He tried to secure a certified true copy of Special Work Order 13-000271 from the Bureau of Lands and the Department of Environment and Natural Resources, but to no avail. He then made reference to TCT No. 144017 which was issued on the basis of Special Work Order 13-000271. He emphasized that before a title may be issued, the land must undergo survey and the data must be registered with the Registry of Deeds and Bureau of Lands where it is annotated as PSD or SWO.

Further, the rip-rapping around the Aguila Village was based on a survey, but he was not the one who conducted it nor caused the rip-rapping. It was already finished when he started his employment with the Vasquez Madrigal Group of Companies.

Accounting Clerk **Arnie Digol**[25] from Esguerra and Blanco Law Office testified on the billing statements they sent to Ma. Isabel.

On May 28, 2009, Ma. Isabel died. She was substituted by Dr. Daniel E. Vasquez and Maria Luisa M. Vasquez as respondent.[26]

The Trial Court's Ruling

By Decision[27] dated September 16, 2010, the trial court ruled in petitioners' favor, thus:

> WHEREFORE[,] in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering as follows:
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> 1. Declaring the SWO-13-000271 covering an area of 1,680.92 square meters of plaintiffs' property as null and void and the cancellation of Transfer Certificate of Title No. 144017 in the name of defendant;
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> 2. The restoration of ownership and possession to the plaintiffs of the portion of their parcel of land with an area of 1,680.92 square meters taken by the defendant through SWO-13-000271, Muntinlupa Cadastral Mapping;
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> 3. The defendants to pay plaintiffs the amount of P50,000.00 by way of acceptance fees, P100,000.00 by way of Attorney's fees and P1,500.00 appearance fees;
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> 4. The defendants to pay plaintiffs the amount of Three Hundred Thousand (P300,000.00) Pesos for the damage to or loss of plaintiffs' property as a result of the new course of the river that traversed to their property as actual damages; and
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> Costs of the suit.

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[25] *Id.* at 161.
[26] *Id.* at 162.
[27] *Id.* at 155-163.

Counterclaim is dismissed.

SO ORDERED.[28]

According to the trial court, the Magdaong River was part of the public dominion, hence, beyond the commerce of man. It could not be registered under the Land Registration Law, let alone covered by a Torrens Title. Special Work Order 13-000271 could not have licensed the taking of property, public or private, nor used to prove the validity of TCT No. 144017 and its derivative titles. Worse, the existence of Special Work Order 13-000271 was not even established during the trial.

Respondents moved for reconsideration[29] on the following grounds:

First. They owned the additional area as a result of accretion. The Magdaong River changed its course and cut into the property of petitioners and increased the land adjoining their property. Contrary to petitioner's claim, the change in course of Magdaong River was gradual and natural. Thus, they were entitled to the accretion which they received from the change of the course of the Magdaong River.

Second. Petitioners failed to prove that the rip-rapping was done in violation of any law or regulation, much less, that the rip-rapping itself caused the change in the course of the Magdaong River. At any rate, petitioners could not assail the accretion because registration does not protect the riparian owner against the diminution of his property through gradual changes in the course of the adjoining stream.

Third. TCT No. 144017 was conclusive evidence that the property no longer belonged to the public domain and that respondents were the owners thereof. More, petitioners failed to controvert Special Work Order 13-000271 approved by the Bureau of Lands. It was of no moment that Special Work Order 13-000271 could not be found in the DENR because the fact remained that TCT No. 144017 was regularly issued.

Fourth. Petitioners' cause of action had already prescribed. TCT No. 144017 was issued on November 25, 1986. Petitioners had one (1) year to question its registration, or four (4) years on ground of fraud, or ten (10) years on ground of implied or constructive trust. As it was, petitioners only filed the case on December 17, 1998 or after more than twelve (12) years from issuance of TCT No. 144017.

Petitioners, on the other hand,[30] asserted that the Magdaong River was part of public dominion, hence, could not be registered under the Land Registration Law. There could be no accretion since respondents' occupation

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[28] *Id.* at 163.
[29] *Id.* at 164-175.
[30] *Id.* at 176-188.

of the portion of Magdaong River was not in conformity with the rules on alluvium. In fact, the additional area was incorporated through the unauthorized process of rip-rapping. The portions incorporated by virtue of the non existent Special Work Order 13-000271, therefore, were unlawfully registered. Lastly, petitioners' cause of action to declare respondents' title void does not prescribe.

By Order[31] dated November 30, 2010, the trial court reversed, *viz.*:

> WHEREFORE[,] premises considered, the motion is hereby granted. Accordingly, the decision of this court dated September 16, 2010 is hereby recalled and set aside. The instant case is hereby dismissed.
>
> There being lack of proof of malicious prosecution, for lack of merit, the counterclaim is likewise dismissed.
>
> SO ORDERED.[32]

On reconsideration, the trial court held that petitioners' cause of action based on implied trust had already prescribed. TCT No. 144017 was issued on November 26, 1986 but the instant case was filed only on December 17, 1998. Too, while an action to compel reconveyance of titled property does not prescribe if the registered owner was in bad faith, petitioners failed to prove that respondents acquired the property and registered it illegally. Special Work Order 13-000271 was presumed regularly issued and duly approved by the Bureau of Lands.

The Proceedings before the Court of Appeals

On appeal, petitioners[33] faulted the trial court for reversing itself on reconsideration. They insisted that respondents acquired the property through fraud and bad faith. Ma. Isabel's rip-rapping activity on the property was illegal because the Magdaong River is part of the public dominion, hence, not subject to appropriation.

At any rate, the Special Work Order 13-000271 is not among the recognized modes of acquiring ownership under the Civil Code. The trial court likewise erred when it gave credence to the same although its existence was never proven. Too, contrary to the trial court's finding that the case involved implied or constructive trust, this case was an action *reivindicatoria* and annulment of title based on fraud is imprescriptible where the suitor is in possession of the property. Petitioners pleaded for the reinstatement of the award of damages.

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[31] *Id.* at 189-190.
[32] *Id.* at 190.
[33] *Id.* at 193-232.

Respondents,[34] on the other hand, countered that petitioners' cause of action had already prescribed; TCT No. 144017 was properly issued and was conclusive evidence of ownership of the property described therein by accretion; and, lastly, rip-rapping *per se* was not illegal, absent evidence of bad faith.

The Court of Appeals' Ruling

By Decision[35] dated February 24, 2012, the Court of Appeals reversed and reinstated with modification the trial court's Decision dated September 16, 2010, thus:

> **WHEREFORE**, the foregoing premises considered, the appeal is **GRANTED** and the appealed Order dated November 30, 2010 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, in Civil Case No. 98-286 is hereby **REVERSED** and **SET ASIDE**. The Decision dated September 16, 2010 of the RTC is **REINSTATED**, with the **ADDITIONAL MODIFICATION** that all certificates of title emanating from TCT No. 144017, including the following:
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> TCT No. 180014 – 3,701 sq. m.
> TCT No. 180015 – 512 sq. m.
> TCT No. 180016 – 100 sq. m.
> TCT No. 180017 – 100 sq. m.
> TCT No. 180018 – 100 sq. m.
> TCT No. 180019 – 100 sq. m.
> TCT No. 180020 – 622 sq. m.
>
> issued by the Register of Deeds of Makati City, and located in Muntinlupa City, are likewise declared **NULL AND VOID** and hereby ordered **CANCELED**. Appellee, her heirs, assigns and persons acting for and in their behalf are **ORDERED** to restore physical possession of the subject property to appellants.
>
> **SO ORDERED**.[36]

The Court of Appeals held, in the main:

First. Prescription had not yet set in because although petitioners' action was denominated as *accion reivindicatoria* and annulment of titles, it was, also in reality a case for quieting of title which does not prescribe. At any rate, even if the case were treated as *accion reivindicatoria*, it was still filed within the ten (10) year prescriptive period because the dispossession occurred only sometime in the mid-1990s when respondents did the rip-rapping. They promptly questioned the same by filing a complaint before the City Engineer's Office which conducted a joint verification survey in 1995. Thereafter, they were constrained to file the present case in December 1998

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[34] *Id.* at 234-260.

[35] Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justice Normandie B. Pizarro and Associate Justice Rodil V. Zalameda (now a member of this Court), *id.* at 270-290.

[36] *Id.* at 289-290.

because respondents refused to honor the result of the joint verification survey done on their respective properties and the Magdaong River in 1995.

Second. Respondents' claim over the property was solely based on Special Work Order 13-000271 which was not even presented in court.

Third. There was no merit in respondents' allegation that petitioners had no legal personality to file the suit because the Magdaong River is part of the public dominion. On the contrary, the complaint alleged that respondents encroached upon petitioners' property as a result of the unauthorized rip-rapping activity.

Fourth, the issue of accretion was never raised in the complaint itself nor during the trial proper.

Respondents moved for reconsideration[37] which the Court of Appeals granted by Resolution[38] dated July 4, 2012, *viz.*:

> **WHEREFORE**, premises considered, the motion for reconsideration is **GRANTED** and our February 24, 2012 Decision is **REVERSED** and **SET ASIDE**. Accordingly, the appeal is **DENIED** for lack of merit and the appealed November 30, 2010 Order is **AFFIRMED** *in toto*.
>
> **SO ORDERED**.[39]

The Court of Appeals held that petitioners failed to allege and prove possession of the portion supposedly encroached upon by respondents. Petitioners' cause of action, therefore, was not for quieting of title but one for reconveyance of property based on implied trust which prescribed after ten (10) years from issuance of the assailed title.

TCT No. 144017 was issued based on Special Work Order 13-000271 submitted to the DENR on December 9, 1983 and approved on September 11, 1986. The purported joint verification survey did not bear the signature of respondents' supposed representative Engr. Dequina. Too, the conflicting findings on the alleged size of encroachment (1,680.92 square meters, as revealed in the 1995 survey; 2,165.73 square meters as revealed in the 2000 survey) cast serious doubts on the reliability of Engr. Marcelo's survey reports.

Petitioners' Motion for Reconsideration[40] was denied per Resolution[41] dated December 20, 2012.

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[37] *Id.* at 291-305.
[38] *Id.* at 331-344.
[39] *Id.* at 343-344.
[40] *Id.* at 345-361.
[41] *Id.* at 388-393.

The Present Petition

Petitioners[42] now seek affirmative relief from the Court and plead that the assailed Court of Appeals' Resolutions dated July 4, 2012 and December 20, 2012 be reversed and set aside, and its Decision dated February 24, 2012, reinstated.

Petitioners claim to have been in constructive possession of the property since the execution of the Extra-Judicial Settlement on May 19, 1976. The law does not distinguish between actual physical possession, on the one hand, and constructive possession, on the other, in determining the issue of prescription. To be deemed in possession of a parcel of land, the owner is not required to set foot on every square meter thereof.

They further assert that respondents' title was acquired in bad faith. The Court of Appeals erroneously gave credence to Special Work Order 13-000271 despite the fact that it was not presented in court. The rip-rapping activity was done on the property based on a non-existent Special Work Order. At any rate, a special work order is not among the recognized modes or sources of acquiring ownership under the law.

In their Comment,[43] respondents reiterate their arguments before the trial court. They maintain that petitioners' action below was for reconveyance of title based on implied or constructive trust which had already prescribed. At any rate, their title is indefeasible and incontrovertible. Lastly, petitioners failed to prove actual possession of the property and respondents' supposed encroachment on their property.

Threshold Issues

First. Has petitioners' action prescribed?

Second. Was TCT No. 144017 validly issued in respondent Ma. Isabel's name?

Third. Did accretion augment the size of respondents' property?

Ruling

The petition is meritorious.

Petitioners' cause of action has not prescribed

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[42] *Id.* at 7-51.
[43] *Id.* at 398-432.

Articles 476 of the Civil Code decrees:

> **ARTICLE 476.** Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
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> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

The provision governs actions for quieting of title. For this action to prosper, two (2) requisites must concur: ***first***, the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and ***second***, the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his or her title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[44]

Here, petitioners made the following allegations in their complaint below:[45]

> 1. That, Plaintiffs are of legal ages, Filipinos, and residing at Poblacion, Muntinlupa City, represented by their Attorney-In Fact, AMPARO S. TENSUAN, Filipino, of legal age, and residing at Poblacion, Muntinlupa City, while Defendant is of legal age, Filipino, and residing at 4-C Urdaneta Apts., Ayala Avenue, Makati City, where summons and other court's processes may be served;
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> 2. That, plaintiffs are co-owners of a parcel of land left by their deceased father, FERNANDO TENSUAN, located at Poblacion, Muntinlupa City, known as Lot 1233 with an area of 32,862 Square Meters, more or less and covered by Transfer Certificate of Title No. 16532 of the Register of Deeds for Makati City, Xerox copy of which is attached hereto attached and marked as Annex "A" and forming an integral part of this complaint;
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> xxx xxx xxx
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> 5. That, herein Plaintiffs, in order to terminate their existing ownership over the parcel of land left by deceased Fernando Tensuan, caused the subdivision of the said parcel of land into Eight lots xxx;
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> xxx xxx xxx
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> 7. That, as a consequence of that riprapping executed and made by the Defendant through the help of her paid employees working at that time / in the Aguila Village Subdivision, it did not only covered the portion of the Magdaong River separating the parcels of land in question but the said Riprapping overlapped some portions of the properties of the Plaintiffs in the southern part of the land fronting the Magdaong River thereby depriving

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[44] See *Eland Phils., Inc. v. Garcia*, 626 Phil. 735, 759 (2010).
[45] *Rollo*, pp. 53-57.

the Plaintiffs of the use and enjoyment of that portion of their property taken illegally by the Defendant without their conformity and through Riprapping of the Magdaong River;

xxx xxx xxx

14. That, the illegal acts of the Defendant in incorporating that portion of the parcels of land of the Plaintiffs in her parcel of land deprive[d] herein plaintiffs of their ownership and possession which this Honorable Court should promptly act on the matter in order that the portion of that parcel of land subject of this complaint be restored into the ownership and possession of the Plaintiffs;

xxx xxx xxx

WHEREFORE, Premises considered, it is most respectfully prayed of this Honorable Court that, decision be rendered in the following manner:

1. Declaring the SWO-13-000271 covering an area of 5,237.53 under Transfer Certificate of Title No. 144017 as Null and Void;

2. Ordering the cancellation of Transfer Certificate of Title No. 144017 indicating Lot No. 14458, Muntinlupa Cadastral mapping and the succeeding Transfer Certificates taken from TCT No. 144017, as follows:

TCT No. 180014 – 3,701 Sqms.
TCT No. 180015 – 512 "
TCT No. 180016 – 100 "
TCT No. 180017 – 100 "
TCT No. 180018 – 100 "
TCT No. 180019 – 100 "
TCT No. 180020 – 622 "

3. Ordering the restoration of ownership and possession to the plaintiffs that portion of their parcel of land with an area of 1,680.92 Square Meters, more or less, which was taken by the Defendant through SWO-13 -00271, Muntinlupa Cadastral Mapping after riprapping her parcel of land in the northern portion going through the Magdaong River and overlapping the portion of the parcel of land of the Plaintiffs;

4. Ordering likewise, the restoration of the Magdaong River which was taken by the Defendant through riprapping thereby affecting the parcel of land of the Plaintiffs;

xxx xxx xxx

Verily, the requisites for quieting of title were sufficiently alleged in the complaint, albeit it was captioned as one for ***accion reivindicatoria*** and annulment of title.

First, petitioners indubitably have legal title over the property, having inherited the same from their father Fernando Tensuan. By Extra-Judicial Settlement dated May 19, 1976, they subdivided the property among

themselves. This Extra-Judicial Settlement was even annotated on the dorsal portion of TCT No. 16532.[46]

Second. A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is, in truth invalid, ineffective, voidable, or unenforceable, or extinguished (or terminated) or barred by extinctive prescription; and (4) and may be prejudicial to the title.[47]

Here, respondent Ma. Isabel was issued TCT No. 144017 covering a 5,237.53 square meter property. Although it appears valid and effective, said title, in truth, overlaps with petitioners' TCT No. 16532 to the extent of 1,680.92 square meters. Worse, the remaining portion pertains to portions of the Magdaong River. Thus, as will further be discussed below, TCT No. 144017 is invalid.

Indeed, it is settled that the nature of the complaint is determined not by its designation or caption but by allegations in the complaint. As the Court pronounced in ***Sps. Munsalud v. National Housing Authority***:[48]

> The cause of action in a complaint is not determined by the designation given to it by the parties. The allegations in the body of the complaint define or describe it. The designation or caption is not controlling more than the allegations in the complaint. It is not even an indispensable part of the complaint.

In any case, it is clear from the allegations and petitioners' prayer that the relief they are seeking are three pronged: for quieting of their title and as a necessary consequence thereof, the reconveyance of subject property to them and annulment of the title or titles that cast cloud on their own title.

Going now to the issue of prescription, in ***Maestrado v. Court of Appeals***[49] the Court decreed that if the plaintiff in an action for quieting of title is in possession of the property being litigated, such action is imprescriptible. For one who is in actual possession of a land, claiming to be the owner thereof may wait until his or her possession is disturbed or his or her title, attacked before taking steps to vindicate his or her right. Undisturbed possession gives one a continuing right to seek the aid of the courts to ascertain the nature of the adverse claim and its effects on his or her title.

Here, petitioners were able to establish that they were in possession of the property when the complaint was filed. As petitioners correctly pointed out, they need not set foot on every square inch of the property to be considered in possession thereof, it being sufficient that their title to the property covers both the portion they are actually occupying and the portion

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[46] *Id.* at 348.
[47] See *Heirs of Tappa v. Heirs of Bacud*, G.R. No. 187633, April 4, 2016.
[48] 595 Phil. 750 (2008).
[49] 384 Phil. 418 (2000).

encroached upon by respondents. In any event, there is no question that petitioners have been residing on the same property, albeit a portion of it was illegally included in the new title issued in respondents' name under suspicious circumstances.

At any rate, petitioners did not sleep on their rights when they promptly reported to the proper authorities Ma. Isabel's unauthorized rip-rapping activity and encroachment upon petitioners' property. As it was, Anita Tensuan immediately sought redress before the City Engineer's Office which conducted a joint verification survey on April 22-25, 1995. It was performed by Engr. Bunyi with the participation of representatives from both parties. Thereafter, the result of the verification survey was brought to the attention of Atty. Roqueza De Castro of the Land Management Sector through letter dated June 2, 1995, albeit the matter was unfortunately not acted upon.

In fine, the Court of Appeals erred in ruling that petitioners' cause of action had already prescribed.

Petitioners enjoy superior rights being prior registrants

Under the Torrens system, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Otherwise stated, the certificate of title is the best proof of ownership of a parcel of land.[50]

A decree of registration is binding and conclusive upon all persons.[51] Sections 31 and 52 of the Property Registration Decree provide (PD 1529) provide:

> **SECTION 31.** ***Decree of Registration.*** — Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: *Provided, however*, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.
>
> ***The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by***

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[50] *Abobon v. Abobon*, 692 Phil. 530, 540 (2012).

[51] See *Spouses Laburada v. Land Registration Authority*, 350 Phil. 779, 789 (1998).

> ***name in the application or notice, the same being included in the general description "To all whom it may concern."*** (emphasis supplied)
>
> **SECTION 52.** ***Constructive notice upon registration.*** - Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

The Court expounded on the rule on notice in ***Legarda and Prieto v. Saleeby***, thus:

> **Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title**. Such presumption is irrebutable. **He is charged with notice of every fact shown by the record** and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[52]

Here, petitioners' TCT No. 16532 was issued on January 7, 1950. As such, third persons were already precluded from registering the same property covered by the title. As it was though, respondent Ma. Isabel was issued TCT No. 144017 on November 25, 1986. There is no dispute that both certificates of title overlap insofar as the 1,680.92 square meters are concerned. Between the two (2) titles, the prior registrant is preferred. For at the time respondent Ma. Isabel registered her alleged property, she was already charged with knowledge that 1,680.92 square meters thereof already belonged to petitioners.

There was no basis for the issuance of TCT No. 144017 in the name of Ma. Isabel M. Vasquez

As borne on the face of TCT No. 144017, Special Work Order 13-000271 dated September 11, 1986 was indicated as basis for its issuance. It was this so-called Special Work Order 13-000271 which supposedly authorized the rip-rapping to be done on Ma. Isabel's property, as a result of which, the Magdaong River changed course. She then had both the abandoned and present river courses, as well as a portion of petitioners' adjacent property titled in her name.

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[52] 31 Phil. 590, 600-601 (1915).

Verily, the presumption of regularity in the issuance of TCT No. 144017 is belied by: ***first***, the source of this title was the so called Special Work Order 13-000271 which in ordinary was a mere construction permit; ***second***, the fact that TCT No. 144017 covered 3,556.62 square meters of the abandoned and present course of the Magdaong River which is a property of public dominion under Articles 420[53] and 502[54] of the Civil Code. In ***Republic v. Tan***,[55] the Court decreed that property of public dominion is outside the commerce of man; and ***finally***, TCT No. 144017 overlapped with 1,680.92 square meter portion of petitioners' own property.

What exactly is a special work order? It is issued by a surveyor as reference for construction works on surveyed areas. Section 161 of DENR Memorandum Circular No. 013-10 is categorical that a special work order cannot be a subject of title, *viz.*:

Special Surveys

> **SECTION 161.** Surveys for geographic and scientific investigations, experiments and all other surveys not otherwise mentioned in this Manual shall be made in accordance with special instructions which may be issued for the purpose following the tertiary accuracy of an isolated survey. This shall be designated as "Special Work Order" (Swo) which cannot be a subject of titling and must be clearly stated on the plan.[56]

Even assuming, therefore, that the so-called Special Work Order 13-000271 was issued authorizing the rip-rapping activity to be done on Ma. Isabel's property, it absolutely cannot become the basis of titling on any property in the name of Ma. Isabel. On its face, therefore, TCT No. 144017 that was issued and sourced out from Special Work Order 13-000271 is void *ab initio*.

And rightly so. For a mere special work order which in ordinary parlance is simply a construction permit is never among the recognized modes of acquiring property under the Civil Code, *viz.*:

> **ARTICLE 712.** Ownership is acquired by occupation and by intellectual creation.

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[53] **ARTICLE 420.** The following things are property of public dominion:
(1) Those intended for public use, such as roads, canals, ***rivers***, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (339a) (Civil Code of the Philippines, Republic Act No. 386, June 18, 1949).

[54] **ARTICLE 502.** The following are of public dominion:
(1) **Rivers and their natural beds**;
xxxx (Civil Code of the Philippines, Republic Act No. 386, June 18, 1949).

[55] See *Republic v. Tan*, 780 Phil. 764 (2016).

[56] Adoption of the Manual on Land Survey Procedures, DENR Memorandum Circular No. 013-10, June 23, 2010.

> Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.
>
> They may also be acquired by means of prescription. (609a)

To be sure, the dubious registration of the area in the name of Ma. Isabel per TCT No. 144017 was void from the very beginning. It should not have been issued at all because to repeat, a mere special work order or in ordinary parlance, a mere construction permit never vests title or ownership in favor of anyone over any real property.

Respondents' theory of accretion was belatedly raised on motion for reconsideration before the trial court and may not be invoked to cover lands of public domain; but whether accretion exists here is a question of fact which is improper under Rule 45

Respondents also claim that the property described in TCT No. 144017 was a product of accretion, hence, it belongs to them.

The argument must fail.

As the Court of Appeals held in its February 24, 2012 Decision:

> As to the issue of accretion, the same is being raised only for the first time in this appeal (should be on motion for reconsideration before the trial court) and was never alleged in appellee's answer. It was not among the issues joined in the proceedings below. It suffices that We find more convincing and in accord with the record the RTC's finding in its Decision dated September 16, 2010 that the riprapping done by appellee encroached on the Magdaong River and thus, the property for which appellee obtained title was not validly registered, a river being part of public domain and beyond the commerce of man. The RTC also correctly found that the SWO cannot be used to take privately owned property and property of the public dominion, being not among the modes of acquiring ownership. Notably, the existence of the SWO was not even proven during trial, with appellee failing to produce an original copy of it. Therefore, appellee did not acquire lawful ownership of the subject property.[57]

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change its theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would

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[57] *Rollo*, pp. 288-289.

be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[58]

At any rate, we cannot depart from the fact that on its face, TCT No. 144017 is void *ab initio*. It was issued on the basis of a mere special work order or construction permit. We cannot certainly look for and accept another source belatedly offered by Ma. Isabel, *i.e.*, accretion. Surely, a void title is inexistent and beyond any form of cure.

Be that as it may, whether accretion took place here is a question of fact beyond the prism of Rule 45. The Court is not a trier of facts.

All told, petitioners are rightfully entitled to the relief prayed for. Title No.144107 is declared void *ab initio* and respondents are obliged to surrender and deliver to petitioners the ownership and possession of the latter's 1,680.92 square meters based on the Joint Verification Survey VS-00-00368 conducted by City Engineer Bunyi on April 22-25, 1995, subject to the approval of the Regional Technical Director for Lands.[59]

As for the remaining portion of 3,556.62 square meters, the same belongs to the State and may be the subject of its appropriate action against respondents.

In its Decision dated September 16, 2010, the trial court correctly awarded ₱50,000.00 by way of acceptance fees, ₱1,500.00 appearance fees, and ₱100,000.00 as attorney's fees. Too, respondents lose whatever was built or planted on the 1,680.92 square meter property of petitioners pursuant to Article 449 of the Civil Code, *viz.*:

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[58] See *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934-935 (2003).

[59] SECTION 146. The Regional Technical Director for Lands may issue order to conduct a verification survey whenever any approved survey is reported to be erroneous, or when titled lands are reported to overlap or where occupancy is reported to encroach another property. In the conduct of verification survey, the Geodetic Engineer shall, among others:

a. Ascertain the position and descriptions of the existing survey monument or marker, buildings, fences, walls, and other permanent improvements, which are used to provide evidence of original boundaries;
b. Give primary consideration to original survey marks, except where other evidence, including original measurements, position of improvements, or statements by occupants, suggest that the original markers were incorrectly placed or have been disturbed;
c. Ascertain the position of buildings, fences, walls or other permanent improvements adversely affected by the determination of the boundaries;
d. Inform the parties concerned of the effect of the determination of the boundaries and secure a statement from the parties that they have been informed of these findings; and
e. Include the submission of a narrative report under oath.

The conduct of verification survey on the basis of a court order directing the Geodetic Engineer of the LMS office concerned shall be made with the authority issued by the RTD for Lands specifying therein the name/s of the designated LMS officials/employees. (Adoption of tbe Manual on Land Survey Procedures, DENR Memorandum Circular No. 013-10, June 23, 2010).

> **ARTICLE 449.** He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.[60]

Respondent Ma. Isabel Vasquez was a builder in bad faith because; ***first***, she caused the issuance of TCT No. 144017 in her name based on a mere construction permit or the so called Special Work Order 13-000271, the existence of which has not even been established; ***second***, despite notice of the encroachment on petitioners' property, respondent Ma. Isabel simply ignored the same; and ***third***, she included in her supposed new title portions of the Magdaong River, albeit the same belong to the State and beyond the commerce of man.

Under Article 450 of the Civil Code, the owner of the land on which anything has been built, planted or sown in bad faith may (1) demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or (2) compel the builder or planter to pay the price of the land, and the sower the proper rent.[61] The records, however, do not show that petitioners elected to avail any of the enumerated options under Article 450. Thus, petitioners are directed to inform the trial court of the option which they have elected within fifteen (15) days from finality of this decision.

Finally, the Court finds no basis to award actual damages of ₱300,000.00. To be sure, the trial court failed to specify the facts and evidence which would warrant such award. In any event, the Court, too, notes that petitioners did not seek payment for actual damages in their complaint.

ACCORDINGLY, the petition is **GRANTED.** The Resolutions dated July 4, 2012 and December 20, 2012 of the Court of Appeals in CA-G.R. CV No. 96671 are **REVERSED** and **SET ASIDE.** TCT No. 144017 and its derivative titles are declared void. Respondent Ma. Isabel M. Vasquez and her successors in interest Dr. Daniel E. Vasquez and Maria Luisa M. Vasquez are further **ORDERED** to:

1) **RESTORE** to petitioners ownership and possession of the 1,680.92 square meter portion of their property erroneously incorporated in TCT No. 144017 and its derivative titles;

2) **PAY** petitioners ₱50,000.00 by way of acceptance fees, ₱1,500.00 appearance fees, and ₱100,000.00 Attorney's fees; and

3) **INFORM** the trial court of the option they have elected under Article 450 of the Civil Code within fifteen (15) days from finality of this decision.

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[60] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.
[61] *Id.*

These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice