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# FIRST DIVISION

# [ G.R. No. 173021, October 20, 2010 ]

## DELFIN LAMSIS, MAYNARD MONDIGUING, JOSE VALDEZ, JR. AND HEIRS OF AGUSTIN KITMA, REPRESENTED BY EUGENE KITMA, PETITIONERS, VS. MARGARITA SEMON DONG-E, RESPONDENT.

## D E C I S I O N

**DEL CASTILLO, J.:**

There is laches when a party is aware, even in the early stages of the proceedings, of a possible jurisdictional objection, and has every opportunity to raise said objection, but fails to do so, even on appeal.

This is a Petition for Review[1] assailing the March 30, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 78987 as well as its May 26, 2006 Resolution[3] which denied petitioners' motion for reconsideration. The dispositive portion of the assailed Decision reads:

> WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit and the judgment dated January 8, 2003 of the Regional Trial Court of Baguio City in Civil Case No. 4140-R is AFFIRMED *in toto.*
>
> SO ORDERED.[4]

***Factual antecedents***

This case involves a conflict of ownership and possession over an untitled parcel of land, denominated as Lot No. 1, with an area of 80,736 square meters. The property is located along Km. 5 Asin Road, Baguio City and is part of a larger parcel of land with an area of 186,090 square meters. While petitioners are the actual occupants of Lot No. 1, respondent is claiming ownership thereof and is seeking to recover its possession from petitioners.

According to respondent Margarita Semon Dong-E (Margarita), her family's ownership and occupation of Lot No. 1 can be traced as far back as 1922 to her late grandfather, Ap-ap.[5] Upon Ap-ap's death, the property was inherited by his children, who obtained a survey plan in 1964 of the 186,090-square meter property, which included Lot No. 1.[6] On the same year, they declared the property for taxation purposes in the name of "The Heirs of Ap-ap."[7] The 1964 tax declaration bears a notation that reads: "Reconstructed from an old Tax Declaration No. 363 dated May 10, 1922 per true of same presented."[8]

The heirs of Ap-ap then executed, for a P500.00 consideration, a Deed of Quitclaim[9] on February 26, 1964 in favor of their brother Gilbert Semon (Margarita's father).

Sometime between 1976 and 1978,[10] Gilbert Semon together with his wife Mary Lamsis, allowed his in-laws Manolo Lamsis and Nancy Lamsis-Kitma, to stay on a portion of Lot No. 1 together with their respective families.[11] They were allowed to erect their houses, introduce improvements, and plant trees thereon. When Manolo Lamsis and Nancy Lamsis-Kitma died sometime in the 1980s, their children, petitioners Delfin Lamsis (Delfin) and Agustin Kitma (Agustin), took possession of certain portions of Lot No. 1. Delfin possessed 4,000 square meters of Lot No. 1, while Agustin occupied 5,000 square meters thereof.[12] Nevertheless, the heirs of Gilbert Semon tolerated the acts of their first cousins.

When Gilbert Semon died in 1983,[13] his children extrajudicially partitioned the property among themselves and allotted Lot No. 1 thereof in favor of Margarita.[14] Since then, Margarita allegedly paid the realty tax over Lot No. 1[15] and occupied and improved the property together with her husband; while at the same time, tolerating her first cousins' occupation of portions of the same lot.

This state of affairs changed when petitioners Delfin and Agustin allegedly began expanding their occupation on the subject property and selling portions thereof.[16] Delfin allegedly sold a 400-square meter portion of Lot No. 1 to petitioner Maynard[17] Mondiguing (Maynard) while Agustin sold another portion to petitioner Jose Valdez (Jose).[18]

With such developments, Margarita filed a complaint[19] for recovery of ownership, possession, reconveyance and damages against all four occupants of Lot No. 1 before the Regional Trial Court (RTC) of Baguio City. The case was docketed as Civil Case No. 4140-R and raffled to Branch 59. The complaint prayed for the annulment of the sales to Maynard and Jose and for petitioners to vacate the portions of the property which *exceed* the areas allowed to them by Margarita.[20] Margarita claimed that, as they are her first cousins, she is willing to donate to Delfin and Agustin a portion of Lot No. 1, provided that she retains the power to choose such portion.[21]

Petitioners denied Margarita's claims of ownership and possession over Lot No. 1. According to Delfin and Agustin, Lot No. 1 is a public land claimed by the heirs of Joaquin Smith (not parties to the case).[22] The Smiths gave their permission for Delfin and Agustin's parents to occupy the land sometime in 1969 or 1970. They also presented their neighbors who testified that it was Delfin and Agustin as well as their respective parents who occupied Lot No. 1, not Margarita and her parents.

Delfin and Agustin also assailed the muniments of ownership presented by Margarita as fabricated, unauthenticated, and invalid. It was pointed out that the Deed of Quitclaim, allegedly executed by all of Ap-ap's children, failed to include two - Rita Bocahan and Stewart Sito.[23] Margarita admitted during trial that Rita Bocahan and Stewart Sito were her uncle and aunt, but did not explain why they were excluded from the quitclaim.

According to Maynard and Jose, Delfin and Agustin were the ones publicly and openly in possession of the land and who introduced improvements thereon. They also corroborated Delfin and Agustin's allegation that the real owners of the property are the heirs of Joaquin Smith.[24]

In order to debunk petitioners' claim that the Smiths owned the subject property, Margarita presented a certified copy of a Resolution from the Land Management Office denying the Smiths' application for recognition of the subject property as part of their ancestral land.[25] The resolution explains that the application had to be denied because the Smiths did not "possess, occupy or utilize all or a portion of the property x x x. The actual occupants (who were not named in the resolution) whose improvements are visible are not in any way related to the applicant or his co-heirs." [26]

To bolster her claim of ownership and possession, Margarita introduced as evidence an unnumbered resolution of the Community Special Task Force on Ancestral Lands (CSTFAL) of the Department of Environment and Natural Resources (DENR), acting favorably on her and her siblings' ancestral land claim over a portion of the 186,090-square meter property.[27] The said resolution states:

> The land subject of the instant application is the ancestral land of the herein applicants. Well-established is the fact that the land treated herein was first declared for taxation purposes in 1922 under Tax Declaration No. 363 by the applicant's grandfather Ap-Ap (one name). Said application was reconstructed in 1965 after the original got lost during the war. These tax declarations were issued and recorded in the Municipality of Tuba, Benguet, considering that the land was then within the territorial jurisdiction of the said municipality. That upon the death of declarant Ap-Ap his heirs x x x transferred the tax declaration in their name, [which tax declaration is] now with the City assessor's office of Baguio.
>
> The land consisting of four (4) lots with a total area of ONE HUNDRED EIGHTY SIX THOUSAND NINETY (186,090) SQUARE METERS, is covered by Psu-198317 duly approved by the Director of Lands on October 4, 1963 in the name of Ap-Ap (one name). In 1964, the same land was the subject of a petition filed by Gilbert Semon, as petitioner, before the Court of First Instance of the City of Baguio in the reopening of Judicial Proceedings under Civil Case No. 1, GLRO Record No. 211 for the registration and the issuance of Certificate of Title of said land. The land registration case was however overtaken by the decision of the Supreme Court declaring such judicial proceedings null and void because the courts of law have no jurisdiction.
>
> It has been sufficiently substantiated by the applicants that prior to and at the time of the pendency of the land registration case and henceforth up to and including the present, the herein applicants by themselves and through their predecessor-in-interest have been in exclusive, continuous, and material possession and occupation of the said parcel of land mentioned above under claim of ownership, devoting the same for

residential and agricultural purposes. Found are the residential houses of the applicants as well as those of their close relatives, while the other areas planted to fruit trees, coffee and banana, and seasonal crops. Also noticeable therein are permanent stone and earthen fences, terraces, clearings, including irrigation gadgets.

On the matter of the applicant[s'] indiguinity [sic] and qualifications, there is no doubt that they are members of the National Cultural Communities, particularly the Ibaloi tribe. They are the legitimate grandchildren of Ap-Ap (one name) who lived along the Asin Road area. His legal heirs are: Orani Ap-Ap, married to Calado Salda; Rita Ap-Ap, married to Jose Bacacan; Sucdad Ap-Ap, married to Oragon Wakit; and Gilbert Semon, a former vice-mayor of Tuba, Benguet, [who] adopted the common name of their father Semon, as it is the customary practice among the early Ibalois. x x x

On the matter regarding the inheritance of the heirs of Ap-Ap, it is important to state [that] Gilbert Semon consolidated ownership thereof and became the sole heir in 1964, by way of a "Deed of Quitclaim" executed by the heirs in his favor. As to the respective share of the applicants['] co-heirs, the same was properly adjudicated in 1989 with the execution of an "Extrajudicial Settlement/ Partition of Estate with Waiver of Rights."

With regard to the overlapping issue, it is pertinent to state that application No. Bg-L-066 of Thomas Smith has already been denied by us in our Resolution dated November 1997. As to the other adverse claims therein by reason of previous conveyances in favor of third parties, the same were likewise excluded resulting in the reduction of the area originally applied from ONE HUNDRED EIGHTY SIX THOUSAND NINETY (186,090) SQUARE METERS, more or less to ONE HUNDRED TEN THOUSAND THREE HUNDRED FORTY TWO (110,342) SQUARE METERS, more or less. Considering the foregoing developments, we find no legal and procedural obstacle in giving due course to the instant application.

Now therefore, we hereby [resolve] that the application for Recognition of Ancestral Land Claim filed by the Heirs of Gilbert Semon, represented by Juanito Semon, be granted [and] a Certificate of Ancestral Land Claim (CALC) be issued to the herein applicants by the Secretary, Department of Environment and Natural Resources, Visayas Avenue, Diliman, Quezon City, through the Regional Executive Director, DENR-CAR, Diego Silang Street, Baguio City. The area of the claim stated herein above is however subject to the outcome of the final survey to be forthwith executed.

Carried this 23rd day of June 1998.[28]

The resolution was not signed by two members of the CSTFAL on the ground that the signing of the unnumbered resolution was overtaken by the enactment of the Republic Act (RA) No. 8371 or the Indigenous People's Rights Act of 1997 (IPRA). The IPRA removed the authority of the DENR to issue ancestral land claim certificates and transferred the same to the National Commission on Indigenous

Peoples (NCIP).[29] The Ancestral Land Application No. Bg-L-064 of the Heirs of Gilbert Semon was transferred to the NCIP, Cordillera Administrative Region, La Trinidad, Benguet and re-docketed as Case No. 05-RHO-CAR-03.[30] The petitioners filed their protest in the said case before the NCIP. The same has been submitted for resolution.

***Ruling of the Regional Trial Court[31]***

After summarizing the evidence presented by both parties, the trial court found that it preponderates in favor of respondent's long-time possession of and claim of ownership over the subject property.[32] The survey plan of the subject property in the name of the Heirs of Ap-ap executed way back in 1962 and the tax declarations thereafter issued to the respondent and her siblings all support her claim that her family and their predecessors-in-interest have all been in possession of the property to the exclusion of others. The court likewise gave credence to the documentary evidence of the transfer of the land from the Heirs of Ap-ap to respondent's father and, eventually to respondent herself. The series of transfers of the property were indications of the respondent's and her predecessors' interest over the property. The court opined that while these pieces of documentary evidence were not conclusive proof of actual possession, they lend credence to respondent's claim because, "in the ordinary course of things, persons will not execute legal documents dealing with real property, unless they believe, and have the basis to believe, that they have an interest in the property subject of the legal documents x x x."[33]

In contrast, the trial court found nothing on record to substantiate the allegations of the petititioners that they and their parents were the long-time possessors of the subject property. Their own statements belied their assertions. Petitioner Maynard and Jose both admitted that they could not secure title for the property from the Bureau of Lands because there were pending ancestral land claims over the property.[34] Petitioner Agustin's Townsite Sales Application over the property was held in abeyance because of respondent's own claim, which was eventually favorably considered by the CSTFAL.[35]

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the [respondent] and against the [petitioners] -
>
> (1) Declaring the transfer of a portion of Lot 1 of PSU 198317 made by the [petitioner] Delfin Lamsis to Menard Mondiguing and Jose Valdez, Jr. null and void;
>
> (2) Ordering the [petitioners] Delfin Lamsis, Agustin Kitma, Menard Mondiguing and Jose Valdez, Jr., to vacate the area they are presently occupying that is within Lot 1 of PSU 198317 belonging to the [respondent] and to surrender possession thereof to the [respondent];
>
> (3) To pay [respondent] attorney's fees in the amount of P10,000.00; and

(4) To pay the costs of suit.

SO ORDERED.[36]

It appears that no motion for reconsideration was filed before the trial court. Nevetheless, the trial court issued an Order[37] allowing the petitioners' Notice of Appeal.[38]

***Ruling of the Court of Appeals***[39]

The sole issue resolved by the appellate court was whether the trial court erred in ruling in favor of respondent in light of the adduced evidence. Citing the rule on preponderance of evidence, the CA held that the respondent was able to discharge her burden in proving her title and interest to the subject property. Her documentary evidence were amply supported by the testimonial evidence of her witnesses.

In contrast, petitioners only made bare allegations in their testimonies that are insufficient to overcome respondent's documentary evidence.

Petitioners moved for a reconsideration[40] of the adverse decision but the same was denied.

Hence this petition, which was initially denied for failure to show that the CA committed any reversible error.[41] Upon petitioners' motion for reconsideration,[42] the petition was reinstated in the Court's January 15, 2007 Resolution.[43]

***Petitioners' arguments***

Petitioners assign as error the CA's appreciation of the evidence already affirmed and considered by the trial court. They maintain that the change in the presiding judges who heard and decided their case resulted in the appreciation of what would otherwise be inadmissible evidence.[44] Petitioners ask that the Court exempt their petition from the general rule that a trial judge's assessment of the credibility of witnesses is accorded great respect on appeal.

To support their claim that the trial and appellate courts erred in ruling in favor of respondent, they assailed the various pieces of evidence offered by respondent. They maintain that the Deed of Quitclaim executed by the Heirs of Ap-ap is spurious and lacks the parties' and witnesses' signatures. Moreover, it is a mere photocopy, which was never authenticated by the notary public in court and no reasons were proferred regarding the existence, loss, and contents of the original copy.[45] Under the best evidence rule, the Deed of Quitclaim is inadmissible in evidence and should have been disregarded by the court.

Respondent did not prove that she and her husband possessed the subject property since time immemorial. Petitioners argue that respondent admitted possessing and cultivating only the land that lies outside the subject property.[46]

Petitioners next assail the weight to be given to respondent's muniments of ownership, such as the tax declarations and the survey plan. They insist that these are not indubitable proofs of respondent's ownership over the subject property given that there are other claimants to the land (who are not parties to this case) who also possess a survey plan over the subject property.[47]

Petitioners then assert their superior right to the property as the present possessors thereof. They cite pertinent provisions of the New Civil Code which presume good faith possession on the part of the possessor and puts the burden on the plaintiff in an action to recover to prove her superior title.[48]

Petitioners next assert that they have a right to the subject property by the operation of acquisitive prescription. They posit that they have been in possession of a public land publicly, peacefully, exclusively and in the concept of owners for more than 30 years. Respondent's assertion that petitioners are merely possessors by tolerance is unsubstantiated.[49]

Petitioners also maintain that the reivindicatory action should be dismissed for lack of jurisdiction in light of the enactment of the IPRA, which gives original and exclusive jurisdiction over disputes involving ancestral lands and domains to the NCIP.[50] They assert that the customary laws of the Ibaloi tribe of the Benguet Province should be applied to their dispute as mandated by Section 65, Chapter IX of RA 8371, which states: "When disputes involve ICCs/IPs,[51] customary laws and practices shall be used to resolve the dispute."

In the alternative that jurisdiction over an *accion reivindicatoria* is held to be vested in the trial court, the petitioners insist that the courts should dismiss the reivindicatory action on the ground of *litis pendentia*.[52] They likewise argue that NCIP has primary jurisdiction over ancestral lands, hence, the courts should not interfere "when the dispute demands the exercise of sound administrative discretion requiring special knowledge, experience and services of the administrative tribunal x x x In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence."[53] The courts should stand aside in order to prevent the possibility of creating conflicting decisions.[54]

***Respondent's arguments***

Respondent opines that the appellate court did not commit any reversible error in affirming the trial court's decision. The present petition is a mere dilatory tactic to frustrate the speedy administration of justice.[55]

Respondent also asserts that questions of fact are prohibited in a Rule 45 petition.[56] Thus, the appreciation and consideration of the factual issues are no longer reviewable.[57]

The issue of lack of jurisdiction is raised for the first time in the petition before this Court. It was never raised before the trial court or the CA. Thus, respondent insists

that petitioners are now barred by laches from attacking the trial court's jurisdiction over the case. Citing *Aragon v. Court of Appeals*,[58] respondent argues that the jurisdictional issue should have been raised at the appellate level at the very least so as to avail of the doctrine that the ground lack of jurisdiction over the subject matter of the case may be raised at any stage of the proceedings even on appeal.[59]

Respondent maintains that there is no room for the application of *litis pendentia* because the issues in the application for ancestral land claim are different from the issue in a reivindicatory action. The issue before the NCIP is whether the Government, as grantor, will recognize the ancestral land claim of respondent over a public alienable land; while the issue in the reivindicatory case before the trial court is ownership, possession, and right to recover the real property.[60]

Given that the elements of lis pendens are absent in case at bar, the allegation of forum-shopping is also bereft of merit. Any judgment to be rendered by the NCIP will not amount to *res judicata* in the instant case.[61]

**Issues**

The petitioners present the following issues for our consideration:

1. Whether the appellate court disregarded material facts and circumstances in affirming the trial court's decision;
2. Whether petitioners have acquired the subject property by prescription;
3. Whether the trial court has jurisdiction to decide the case in light of the effectivity of RA 8371 or the Indigenous People's Rights Act of 1997 at the time that the complaint was instituted;
4. If the trial court retains jurisdiction, whether the ancestral land claim pending before the NCIP should take precedence over the reivindicatory action.[62]

**Our Ruling**

*Whether the appellate court disregarded material facts and circumstances in affirming the trial court's decision*

Both the trial and the appellate courts ruled that respondent has proven her claims of ownership and possession with a preponderance of evidence. Petitioners now argue that the two courts erred in their appreciation of the evidence. They ask the Court to review the evidence of both parties, despite the CA's finding that the trial court committed no error in appreciating the evidence presented during trial. Hence, petitioners seek a review of questions of fact, which is beyond the province of a Rule 45 petition. A question of fact exists if the uncertainty centers on the truth or falsity of the alleged facts.[63] "Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact."[64]

Since it raises essentially questions of fact, this assignment of error must be

dismissed for it is settled that only questions of law may be reviewed in an appeal by *certiorari*.[65] There is a question of law when there is doubt as to what the law is on a certain state of facts. Questions of law can be resolved without having to re-examine the probative value of evidence presented, the truth or falsehood of facts being admitted.[66] The instant case does not present a compelling reason to deviate from the foregoing rule, especially since both trial and appellate courts agree that respondent had proven her claim of ownership as against petitioners' claims. Their factual findings, supported as they are by the evidence, should be accorded great respect.

In any case, even if petitioners' arguments attacking the authenticity and admissibility of the Deed of Quitclaim executed in favor of respondent's father are well-taken, it will not suffice to defeat respondent's claim over the subject property. Even without the Deed of Quitclaim, respondent's claims of prior possession and ownership were adequately supported and corroborated by her other documentary and testimonial evidence. We agree with the trial court's observation that, in the ordinary course of things, people will not go to great lengths to execute legal documents and pay realty taxes over a real property, unless they have reason to believe that they have an interest over the same.[67]

The fact that respondent's documents traverse several decades, from the 1960s to the 1990s, is an indication that she and her family never abandoned their right to the property and have continuously exercised rights of ownership over the same.

Moreover, respondent's version of how the petitioners came to occupy the property coincides with the same timeline given by the petitioners themselves. The only difference is that petitioners maintain they came into possession by tolerance of the Smith family, while respondent maintains that it was her parents who gave permission to petitioners. Given the context under which the parties' respective statements were made, the Court is inclined to believe the respondent's version, as both the trial and appellate courts have concluded, since her version is corroborated by the documentary evidence.

*Whether petitioners have acquired the subject property by prescription*

Assuming that the subject land may be acquired by prescription, we cannot accept petitioners' claim of acquisition by prescription. Petitioners admitted that they had occupied the property by tolerance of the owner thereof. Having made this admission, they cannot claim that they have acquired the property by prescription unless they can prove acts of repudiation. It is settled that possession, in order to ripen into ownership, must be in the concept of an owner, public, peaceful and uninterrupted. Possession not in the concept of owner, such as the one claimed by petitioners, cannot ripen into ownership by acquisitive prescription, *unless* the juridical relation is first *expressly repudiated* and such repudiation has been communicated to the other party. Acts of possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription. Possession by tolerance is not adverse and such possessory acts, no matter how long performed, do not start the running of the period of prescription. [68]

In the instant case, petitioners made no effort to allege much less prove any act of

repudiation sufficient for the reckoning of the acquisitive prescription. At most, we can find on record the sale by petitioners Delfin and Agustin of parts of the property to petitioners Maynard and Jose; but the same was done only in 1998, shortly before respondent filed a case against them. Hence, the 30-year period necessary for the operation of acquisitve prescription had yet to be attained.

*Whether the ancestral land claim pending before the National Commission on Indigenous Peoples (NCIP) should take precedence over the reivindicatory action*

The application for issuance of a Certificate of Ancestral Land Title pending before the NCIP is akin to a registration proceeding. It also seeks an official recognition of one's claim to a particular land and is also *in rem*. The titling of ancestral lands is for the purpose of "officially establishing" one's land as an ancestral land.[69] Just like a registration proceeding, the titling of ancestral lands does not vest ownership[70] upon the applicant but only recognizes ownership[71] that has already vested in the applicant by virtue of his and his predecessor-in-interest's possession of the property since time immemorial. As aptly explained in another case:

> It bears stressing at this point that **ownership should not be confused with a certificate of title. Registering land under the Torrens system does not create or vest title** because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Corollarily, **any question involving the issue of ownership must be threshed out in a separate suit** x x x The trial court will then conduct a full-blown trial wherein the parties will present their respective evidence on the issue of ownership of the subject properties to enable the court to resolve the said issue. x x x[72] (Emphasis supplied)

Likewise apropos is the following explanation:

> The fact that the [respondents] were able to secure [TCTs over the property] did not operate to vest upon them ownership of the property. The Torrens system does not create or vest title. It has never been recognized as a mode of acquiring ownership x x x **If the [respondents] wished to assert their ownership, they should have filed a judicial action for recovery of possession** and not merely to have the land registered under their respective names. x x x Certificates of title do not establish ownership.[73] (Emphasis supplied)

A registration proceeding is not a conclusive adjudication of ownership. In fact, if it is later on found in another case (where the issue of ownership is squarely adjudicated) that the registrant is not the owner of the property, the real owner can file a reconveyance case and have the title transferred to his name.[74]

Given that a registration proceeding (such as the certification of ancestral lands) is not a conclusive adjudication of ownership, it will not constitute *litis pendentia* on a reivindicatory case where the issue is ownership.[75] "For litis pendentia to be a

ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case."[76] The third element is missing, for any judgment in the certification case would not constitute *res judicata* or be conclusive on the ownership issue involved in the reivindicatory case. Since there is no *litis pendentia*, there is no reason for the reivindicatory case to be suspended or dismissed in favor of the certification case.

Moreover, since there is no *litis pendentia*, we cannot agree with petitioners' contention that respondent committed forum-shopping. Settled is the rule that "forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other."[77]

*Whether the trial court has jurisdiction to decide the case in light of the effectivity of RA 8371 or the Indigenous People's Rights Act of 1997 at the time that the complaint was instituted*

For the first time in the entire proceedings of this case, petitioners raise the trial court's alleged lack of jurisdiction over the subject-matter in light of the effectivity[78] of the IPRA at the time that the complaint was filed in 1998. They maintain that, under the IPRA, it is the NCIP which has jurisdiction over land disputes involving indigenous cultural communities and indigenous peoples.

As a rule, an objection over subject-matter jurisdiction may be raised at any time of the proceedings. This is because jurisdiction cannot be waived by the parties or vested by the agreement of the parties. Jurisdiction is vested by law, which prevails at the time of the filing of the complaint.

An exception to this rule has been carved by jurisprudence. In the seminal case of *Tijam v. Sibonghanoy,*[79] the Court ruled that the existence of laches will prevent a party from raising the court's lack of jurisdiction. Laches is defined as the "failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it."[80] Wisely, some cases[81] have cautioned against applying *Tijam,* except for the most exceptional cases where the factual milieu is similar to *Tijam.*

In *Tijam,* the surety could have raised the issue of lack of jurisdiction in the trial court but failed to do so. Instead, the surety participated in the proceedings and filed pleadings, other than a motion to dismiss for lack of jurisdiction. When the case reached the appellate court, the surety again participated in the case and filed their pleadings therein. It was only after receiving the appellate court's adverse decision that the surety awoke from its slumber and filed a motion to dismiss, in lieu of a motion for reconsideration. The CA certified the matter to this Court, which then ruled that the surety was already barred by laches from raising the jurisdiction issue.

In case at bar, the application of the *Tijam* doctrine is called for because the presence of laches cannot be ignored. If the surety in *Tijam* was barred by laches for raising the issue of jurisdiction for the first time in the CA, what more for petitioners in the instant case who raised the issue for the first time in their petition before this Court.

At the time that the complaint was first filed in 1998, the IPRA was already in effect but the petitioners never raised the same as a ground for dismissal; instead they filed a motion to dismiss on the ground that the value of the property did not meet the jurisdictional value for the RTC. They obviously neglected to take the IPRA into consideration.

When the amended complaint was filed in 1998, the petitioners no longer raised the issue of the trial court's lack of jurisdiction. Instead, they proceeded to trial, all the time aware of the existence of the IPRA as evidenced by the cross-examination[82] conducted by petitioners' lawyer on the CSTFAL Chairman Guillermo Fianza. In the cross-examination, it was revealed that the petitioners were aware that the DENR, through the CSTFAL, had lost its jurisdiction over ancestral land claims by virtue of the enactment of the IPRA. They assailed the validity of the CSTFAL resolution favoring respondent on the ground that the CSTFAL had been rendered *functus officio* under the IPRA. Inexplicably, petitioners still did not question the trial court's jurisdiction.

When petitioners recoursed to the appellate court, they only raised as errors the trial court's appreciation of the evidence and the conclusions that it derived therefrom. In their brief, they once again assailed the CSTFAL's resolution as having been rendered *functus officio* by the enactment of IPRA.[83] But nowhere did petitioners assail the trial court's ruling for having been rendered without jurisdiction.

It is only before this Court, eight years after the filing of the complaint, after the trial court had already conducted a full-blown trial and rendered a decision on the merits, after the appellate court had made a thorough review of the records, and after petitioners have twice encountered adverse decisions from the trial and the appellate courts -- that petitioners now want to expunge all the efforts that have gone into the litigation and resolution of their case and start all over again. This practice cannot be allowed.

Thus, even assuming *arguendo* that petitioners' theory about the effect of IPRA is correct (a matter which need not be decided here), they are already barred by laches from raising their jurisdictional objection under the circumstances.

**WHEREFORE**, premises considered, the petition is denied for lack of merit. The March 30, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 78987 and its May 26, 2006 Resolution denying the motion for reconsideration are **AFFIRMED**.

**SO ORDERED**.

*Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro,* and *Perez, JJ.*, concur.

[1] *Rollo,* pp. 11-24.

[2] CA *rollo*, pp. 124-133; penned by Associate Justice Eliezer R. De los Santos and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[3] Id. at 153.

[4] CA Decision, p. 10; id. at 133.

[5] Records, p. 100.

[6] Id. at 276.

[7] Id. at 277.

[8] Exhibit "B-1"; id. at the back of p. 277.

[9] Id. at 100 and 297.

[10] Id. at 101.

[11] Id.

[12] Id. at 102-103.

[13] Id. at 99.

[14] Id. at 102 and 300-301.

[15] There were two tax receipts in the name of Margarita Semon available in the records. One is dated 12-20-1990 (id. at 293), while the other is dated 4-22-1991 (id. at 292).

[16] Id. at 103-104.

[17] Sometimes spelled as Menard in some parts of the records.

[18] Records, p. 105.

[19] Id. at 99-109. Upon petitioners' motion (id. at 62-64), the original complaint was dismissed for lack of jurisdiction since the value of the property (at P500 and improvements valued at P200) did not meet the jurisdictional amounts for the RTC (Order dated February 3, 1999; id. at 69-70). The respondent filed a motion for reconsideration and to admit the amended complaint (id. at 71-87), which motion was granted by the trial court (id. at 98).

[20] Id. at 107-108.

[21] Id. at 103.

[22] TSN Folder, pp. 116-117 and 140.

[23] Records, pp. 142-146.

[24] Id. at 138-141.

[25] Id. at 309-310.

[26] Id. at 309.

[27] The Heirs of Ap-ap applied for a certificate of ancestral land claim over the 186,090 square meters but the CSTFAL approved their claim over 110,342 square meters only (id. at 505).

[28] Id. at 504-506.

[29] Testimony of Guillermo S. Fianza (Chairman of CSTFAL), p. 263; testimony of Alfonso P. Aroco (Member of the CSTFAL), pp. 297-306.

[30] In the Matter of Application for Recognition of Ancestral Land Claim over a Parcel of Land Located at Res. Sec. "L" Km. 5, Asin Road, Baguio City: Heirs of Gilbert Semon, represented by Juanito Semon, applicant, Delfin Lamsis, et al. Protestants, Peter Sito, Protestant-Intervenor (*rollo*, pp. 169-173).

[31] Records, pp. 644-653. Penned by Judge Iluminada Cabato-Cortes.

[32] Decision, p. 5; id. at 648.

[33] Id. at 6; id. at 649.

[34] Id. at 6-7; id. at 650-651.

[35] Id. at 9-10; id. at 652-653.

[36] Id. at 10; id. at 653.

[37] Records, p. 656.

[38] Id. at 655.

[39] CA *rollo*, pp. 124-133.

[40] Id. at 134-144.

[41] Resolution dated August 23, 2006 (*rollo,* p. 153).

[42] Id. at 159-167.

[43] Id. at 179.

[44] Petitioners' Memorandum, pp. 18-19; id. at 233-234.

[45] Id. at 19-20; id. at 234-235.

[46] Id. at 27; id. at 242.

[47] Id. at 27-30; id. at 242- 245.

[48] Id. at 34-35; id. at 249-250.

[49] Id. at 38-41; id. at 253-356.

[50] Id. at 14; id. at 229.

[51] Indigenous Cultural Communities/Indigenous Peoples.

[52] Petitioners' Memorandum, p. 14; *rollo*, p. 229.

[53] Id. at 15; id. at 230.

[54] Id. at 17; id. at 232.

[55] Respondent's Memorandum, p. 8; id. at 205.

[56] Id. at 8; id. at 205.

[57] Id. at 11-12; id. at 208-209.

[58] 337 Phil. 289 (1997).

[59] Respondent's Memorandum, p. 9; *rollo*, p. 206.

[60] Id. at 10-11; id. at 207-208.

[61] Id. at 13; id. at 210.

[62] Petitioners' Memorandum, p. 10; id. at 225.

[63] *New Regent Sources, Inc. v. Tanjuatco, Jr.,* G.R. No. 168800, April 16, 2009, 585 SCRA 329, 335.

[64] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630, 636.

[65] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac,* 451 Phil. 368, 377 (2003).

[66] *New Regent Sources, Inc. v. Tanjuatco, Jr.,* supra.

[67] Decision, p. 6; records, p. 649.

[68] *Esguerra v. Manantan,* G.R. No. 158328, February 23, 2007, 516 SCRA 561, 572-573.

[69] Section 7 (c), *Rules and Regulations Implementing Republic Act No. 8371, otherwise known as "The Indigenous People's Rights Act of 1997."*

[70] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac,* supra note 64 at 377; *Amoroso v. Alegre, Jr.,* G.R. No. 142766, June 15, 2007, 524 SCRA 641, 653-655; *Development Bank of the Philippines v. Court of Appeals,* 387 Phil. 283, 295 (2000); *Heirs of De Guzman Tuazon v. Court of Appeals,* 465 Phil. 114, 126 (2004); *Heirs of Dela Cruz v. Court of Appeals,* 358 Phil. 652, 660-661 (1998).

[71] *Garcia v. Court of Appeals,* 371 Phil. 107, 118 (1999); *Spouses Rosario v. Court of Appeals,* 369 Phil 729, 748 (1999); *Heirs of De Guzman Tuazon v. Court of Appeals,* supra.

[72] *Heirs of De Guzman Tuazon v. Court of Appeals,* supra note 70 at 126-127.

[73] *Heirs of Dela Cruz v. Court of Appeals,* supra note 70.

[74] "The Land Registration Act as well as the Cadastral Act protects only the holders of a title in good faith and does not permit its provisions to be used as a shield for the commission of fraud, or that one should enrich himself at the expense of another. The above-stated Acts do not give anybody, who resorts to the provisions thereof, a better title than he really and lawfully has. If he happened to obtain it by mistake or to secure, to the prejudice of his neighbor, more land than he really owns, with or without bad faith on his part, the certificate of title, which may have been issued to him under the circumstances, may and should be cancelled or corrected." *Angeles v. Samia,* 66 Phil. 444, 449 (1938). Citations omitted.

The Rules and Regulations Implementing the IPRA Law likewise provides for cancellation of illegally acquired titles and reconveyance to the rightful ICCs/IPs (Section 9, Part I, Rule VIII).

[75] "An *accion de reivindicatoria* x x x is a suit to recover possession of a parcel of land as an element of ownership. It is an action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. The judgment in such a case determines the ownership of the property and the awards the possession of the property to the lawful owner." *Amoroso v. Alegre, Jr.,* supra note 70 at 653.

[76] *City of Caloocan v. Court of Appeals,* G.R. No. 145004, May 3, 2006, 489 SCRA 45, 55-56.

[77] *Development Bank of the Philippines v. Spouses Gatal,* 493 Phil. 46, 53 (2005).

[78] Effective November 22, 1997.

[79] 131 Phil. 556 (1968).

[80] Id. at 563.

[81] *Figueroa v. People,* G.R. No. 147406, July 14, 2008, 558 SCRA 63; *Calimlim v. Ramirez,* 204 Phil. 25 (1982).

[82] TSN Records, pp. 234-286.

[83] Appellants' Brief, p. 17; CA *rollo*, p. 63.

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