

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 00785-MIN, June 11, 2014]

**HEIRS OF MANUEL TAMESIS, SR. AS REPRESENTED BY
GRECILDA A. TAMESIS, PETITIONERS, VS. ENRIQUE AMANTE,
RESPONDENT.**

D E C I S I O N

INTING, J.:

Before Us is a Petition for Review^[1] filed by petitioners (Tamesis) assailing the Decision^[2] of the Office of the Secretary, Department of Environment Natural Resources, Diliman, Quezon City, awarding a whole parcel of land covered under a Miscellaneous Sales Application to respondent Amante, the dispositive portion of which states:

WHEREFORE, finding the decision, dated April 20, 1999 not fully in accord with the merit of the case, the same is hereby MODIFIED, that the whole lot No. 3920, Pls-67 should be awarded to the appellant Enrique Amante pursuant to RA 730.

Accordingly, his Miscellaneous Sales Application No. 68359 filed on April 15, 1959 should be given due course.

SO ORDERED.

The facts of the case are as follows:

In 1959, Amante applied for a Miscellaneous Sales Patent over Lot No. 3920 Pls-67, the subject property located at Barangay 5, San Francisco, Agusan del Sur.^[3] In an investigation conducted by the Bureau of Lands on the subject property sometime in 1960, it was reported that no improvement was made on the property.^[4] In another investigation over the lot in 1974, it was reported that Amante constructed his house made of light materials on the property and that there was no other occupant of the property.^[5] The 1974 report has a handwritten note on the upper right hand portion of the document which says "personal file".^[6] Based on the records, Amante filed his tax declarations and paid the real property taxes over the property.^[7]

In 1993, Tamesis filed his land protest on the patent application of Amante alleging that: (1) he, not Amante, is the actual occupant of the property; (2) he started occupying the property since 1959; and (3) Amante has never occupied the property.^[8]

In his Answer, Amante alleged, among others, that: (1) his temporary residence is Ampayon, Butuan City; (2) Tamesis had never been and still is not in possession of the property; (3) "there is nobody in actual occupancy thereof;" (4) there is no house or improvement on the land; (5) he is in open, continuous, peaceful, adverse and public possession of the property as shown by his tax declarations, payment of taxes and the 1974 investigation report.^[9]

In an investigation conducted by the DENR on the subject property in 1997 as a consequence of the protest filed, it was found that^[10]:

It is the observation of the undersigned that the applicant respondent is actually residing at Purok 1, Ampayon, Butuan City and his allegation that he had introduced improvements such as coconut trees, star apple and pomelo cannot be found on the land in question, per re-inspection and re-verification conducted by the representative of this office.

The applicant-respondent, Enrique Amante, failed to comply with the basic requirements of law of residence and cultivation.

The protestant, Manuel A. Tamesis, is now actually occupying Lot No. 3920, Pls-67, situated at Barangay 5, San Francisco, Agusan del Sur and have introduced improvements such as eight (8) coconut trees; one (1) hill banana, and rice field newly planted with rice, as shown in the pictorials.

The decision^[11] of DENR Ambago, Butuan City mentioned two ocular inspections which revealed the following:

April 15, 1994 Ocular Inspection	Tamesis is the actual occupant of the property and he introduced improvements such as coconuts, banana, and a rice paddy.
September 25, 1998 Ocular Inspection	There are two (2) recently built houses on the lot. One occupied by Tamesis and the other occupied by Ma. Luz Nobleza, lessee of Amante.

The DENR Ambago, Butuan then ruled that the subject property be equally divided between Amante and Tamesis for equitable considerations considering that both are occupying the subject property.^[12]

The DENR Secretary, acting on the the appeal filed by Amante, ruled the whole property be awarded to Amante.^[13] The Secretary considered, among others, that: (1) in 1974, per investigation report, Amante constructed a house and introduced improvements on the land; and (2) the house of Tamesis was newly built per investigation report in 1998.^[14]

Aggrieved, Tamesis filed the instant petition and raised the following sole ground: