

## TENTH DIVISION

[ CA-G.R. SP NO. 93596, August 31, 2006 ]

**GREGORIO FERNANDEZ<sup>[\*]</sup>, PETITIONER, VS. JACINTO PASCUA,  
RESPONDENT.**

### D E C I S I O N

**SALAZAR-FERNANDO, J.:**

Before this Court is a petition for review under Rule 43 of the Rules of Court assailing the decision<sup>[1]</sup> dated February 3, 2006 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 10941 [Reg. Case No. 10732-NNE-00] entitled "Gregorio Fernandez and Floro Fernandez, Petitioners-Appellants, versus Jacinto Pascua, Respondent-Appellee", the decretal portion of which reads:

"WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED IN TOTO.

SO ORDERED."

The facts are:

On December 4, 2000, petitioner Gregorio Fernandez (Fernandez for brevity) filed before the DARAB, Talavera, Nueva Ecija a petition<sup>[2]</sup> for the "Correction of TCT No. FP 29495 and Recovery of Possession and Damages" alleging that: he and his wife are the registered owners of that parcel of land covered by Transfer Certificate of Title No. NT-51906 containing an area of 105,544 square meters; a portion thereof, about three (3) hectares, more or less, was leased to respondent Jacinto Pascua (Pascua for brevity), who later surreptitiously enlarged his landholding, such that the original area leased to him was increased by 1.5754 hectares, more or less; respondent Pascua was able to obtain title over an area of 4.5754 hectares, more or less, causing the same to be registered in his name under TCT No. EP-29495, which reflects the increase in area, from 3.0 hectares to 4.5754 hectares; respondent Pascua admitted the enlargement of his landholding when the same was brought to the attention of the Barangay Agrarian Reform Council of Barangay Mangandingay, Munoz, Nueva Ecija; he agreed to the re-survey of the land so as to conform with the *Kasunduan sa Buwisan sa Sakahan* but nonetheless, he refused to comply with his undertaking; the exact area of land under the actual cultivation of respondent Pascua is three (3) hectares only as reflected in the Supplemental Parcillary Mapping conducted in 1981 by the Bureau of Lands and by the then Ministry of Agrarian Reform; from 1988 to 2000, respondent Pascua had been harvesting from the encroached portion around sixty-five (65) cavans of palay per annum, or a total of seven hundred eighty (780) cavans; hence, he is thus under obligation to return 50% of the harvest from the encroached portion. In sum, petitioner Fernandez prayed for the return of the encroached portion and 50% of the harvest realized

thereof by respondent Pascua.

In his Answer,<sup>[3]</sup> respondent Pascua denied the material allegations in the petition and countered that: he is in possession and in actual occupation of the subject landholding but he is cultivating only about 2.5 hectares thereof because the rest of the land is hilly and stony that nothing could be planted thereon; the area of the land is not really three (3) hectares but petitioner Fernandez always represented that the landholding occupied and possessed by him is three (3) hectares; when the said landholding was surveyed in 1980 by the Ministry of Agrarian Reform, its area was discovered to be 45,754 square meters, more or less, which was reflected in TCT No. EP 29495 and in Emancipation Patent No. 210590 of the Land Records of Nueva Ecija; the same was entered in the Registry of Deeds of Nueva Ecija pursuant to Section 2 of PD No. 266 and Section 103 of PD No. 1529 bearing an area of 45,754 square meters; he had been in possession and occupation of the same area of the landholding since time immemorial; he is a lawful beneficiary of the subject landholding, a portion of about two (2) hectares of which cannot be cultivated, although he has been exerting efforts and spending his own money to make it agriculturally viable.

On July 17, 2001, the Provincial Adjudicator of Nueva Ecija rendered a resolution<sup>[4]</sup> dismissing the petition holding that: it cannot rule on the correction of the area of the landholding because the prayer in the petition did not seek the correction of its area covered by TCT No. EP 29495 from 45,754 sq.m. to 30,000 sq.m.; the concerned officials of the DAR who are tasked to implement agrarian reform laws and programs, to include among others, the generation and issuance of Emancipation Patents, namely, the Provincial Agrarian Reform Officer (PARO) and/or the Municipal Agrarian Reform Officer (MARO), as well as the Register of Deeds, were not impleaded as parties-respondents; the corresponding correction of the area of the landholding under TCT No. EP 29495 or its cancellation, and the eventual generation and issuance of a new one cannot be done without impleading the PARO and/or MARO and the Register of Deeds; respondent Pascua's title is the best evidence to prove his ownership over the land described therein and unless his title is declared by a competent authority to be null and void, or unless ordered corrected, he should not be disturbed of its peaceful possession and cultivation.

On appeal, the DARAB affirmed the resolution of the Provincial Adjudicator.<sup>[5]</sup> The DARAB ruled that: there was no valid ground to justify the correction of respondent Pascua's emancipation patent; petitioner Fernandez's allegation of encroachment was not supported by convincing evidence; the emancipation patent is a public document which is entitled to full faith and credit in the absence of competent evidence that its execution is tainted with defects and irregularities.

Hence, this petition for review assigning the following errors:

**"I.**

**THE DARAB ERRED IN NOT CONSIDERING THE FORCE AND EFFECT OF THE KASUNDUAN BUWISAN SA SAKAHAN EXECUTED ON MAY 29, 1973 WHICH HAS THE FORCE AND EFFECT AS LAW BETWEEN PARTIES CONSIDERING THE SAID KASUNDUAN WAS NEVER IMPUGNED NOR REFORMED, WHEREIN THE AREA OF THE**