

THIRTEENTH DIVISION

[CA-G.R. CV NO. 74952, August 31, 2006]

**BEV & COMPANY, REPRESENTED BY BIENVENIDO E. VILLAROYA,
GENERAL PARTNER, PLAINTIFF-APPELLEE, VS. DOMINGO
BAUSA, DEFENDANT-APPELLANT.**

D E C I S I O N

CRUZ, J.:

Before the Regional Trial Court of Sorsogon City (Branch 52) was an action for recovery of possession and damages involving a fishpond consisting of 29.6255 hectares (or "subject fishpond") and situated at Barangay San Rafael, Pilar, Sorsogon. The subject fishpond is covered by Fishpond Lease Agreement No. 3018 (or "FLA") issued to Pedro Salazar (or "Salazar") on July 23, 1979 by Jose J. Leido, Jr., then Minister of the Ministry of Natural Resources (or "MNR"). It had a term of twenty-five years which was to expire on December 31, 2003.

On April 25, 1980, Salazar assigned his leasehold rights in the subject fishpond to the Development Bank of the Philippines (or "DBP") which, in turn, transferred said rights to BEV & Company (or "appellee") pursuant to the Deed of Conditional Sale dated January 30, 1987 executed by DBP in its favor.

Instituted on December 23, 1998 by appellee, represented by its general partner, Bienvenido E. Villaroya, against Domingo Bausa (or "appellant"), the action was predicated on the averments that appellee is the owner/transferee of the rights and interests in the subject fishpond but is being occupied by appellant without lawful authority; that on December 4, 1998, appellant prevented appellee's men from entering the fishpond "in an aggressive manner", preventing them from working thereon; and that despite demands, appellant refused to "turn over" the possession of the subject fishpond.

In answer, appellant averred that the subject fishpond forms part of the mangrove swamps in Barangay San Rafael; that he and his predecessor-in-interest have been in possession of the subject fishpond in the concept of an owner for more than fifty years and had introduced improvements thereon; that the abovementioned Deed of Conditional Sale is null and void since the subject fishpond is classified as forest land and, therefore, an inalienable public land; and that said fishpond has been declared as ancestral domain on October 9, 1997 per Certificate of Ancestral Domain Claim No. RO5-CADC-096 awarded by the Department of Environment and Natural Resources (or "DENR") to the indigenous cultural communities settling in Barangay San Rafael. Appellant raised a counterclaim for moral and exemplary damages and attorney's fees.

After trial, the lower court rendered a decision dated January 8, 2002, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant to wit:

1. Ordering the defendant to turn over the possession of the subject land to the herein plaintiff and to respect plaintiff's peaceful possession thereof until December 31, 2003;
2. Dismissing the parties' claims for damages and attorney's fees;
3. No pronouncement as to costs.

SO ORDERED."

Appellant interposed the instant appeal anchored on a lone assignment of error, to wit:

"THE COURT A *QUO* ERRED IN HOLDING THAT THE APPELLEE HAS A BETTER RIGHT THAN THE APPELLANT OVER THE SUBJECT PROPERTY."

The appeal is bereft of merit.

Appellant contends that the FLA conferred no right on Salazar since it was not signed by the Minister of the MNR; and that his right as a member of the Agta-Tabangnon and Agta-Cimarron tribes who have ancestral domain claims over 8,853.37 hectares of land in Pilar, Sorsogon, including the subject fishpond, should be respected. In rejecting appellant's contention, the lower court found, thus:

"Undoubtedly, the herein plaintiff has a better claim than the defendant, and thus, has the right to possess the subject land. His claim can be traced back to as early as July 23, 1979 when Pedro Salazar, his predecessor-in-interest, was granted the lease of the subject land by virtue of Fishpond Lease Agreement No. 3018 (Exhibit 'A'). Although the defendant is questioning the authenticity of this document, the plaintiff had duly proved that it is authentic. MR. ERNESTO ARANDIA, an employee of the Department of Agriculture, the Chief of the Regulatory Division in the Regional Office of the Bureau of Fisheries and Aquatic Resources, testified as follows:

'ATTY. ROSALES:

Q: I will show to you Exhibit 'A' which is a Fishpond Lease Agreement No. 3018, will you please go over this and tell us if this is the fishpond lease agreement which you said your office issued or manages whenever there are application (sic) made in your office.

A: This lease agreement is the same as what we have in our record. I have with me our record which is the same as what you have.

Q: Which is Exhibit 'A'.

A: Yes, sir.

Q: Will you produce it if you have that file/records of yours insofar as this