

## SEVENTH DIVISION

[ CA-G.R. SP NO. 73815, August 16, 2006 ]

**ANTONIO FONTILLAS, JR., PETITIONER, VS. DEPARTMENT OF  
AGRARIAN REFORM ADJUDICATION BOARD (DARAB) AND THE  
HEIRS OF PRUDENCIO REGUNAY, RESPONDENTS.**

### D E C I S I O N

**DIMAAMPAO, J.:**

Agrarian laws must be interpreted liberally in favor of the grantee, in order to give full force and effect to their clear intent, which is "to achieve a dignified existence for the small farmers" and to make them "more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society."<sup>[1]</sup>

Through this *Petition for Review*<sup>[2]</sup>, petitioner assails the following: (a) *Decision*<sup>[3]</sup> dated 17 January 2001 of the Department of Agrarian Reform Adjudication Board (DARAB) Quezon City, in DARAB Case No. 8805 which affirmed the *Decision*<sup>[4]</sup> dated 10 September 1998 of the Provincial Adjudicator for South Nueva Ecija and Zambales; and (b) *Resolution*<sup>[5]</sup> dated 31 July 2002, denying petitioner's motion for reconsideration thereof.

As disclosed by the record, the antecedent facts are as follows: Prudencio Regunay ("Prudencio") filed a *Complaint*<sup>[6]</sup> against petitioner Antonio Fontillas, Jr., ("Fontillas") for recovery of possession and declaration of rights as tenant with prayer for preliminary injunction and temporary restraining order and damages. On 4 February 1997, Prudencio died<sup>[7]</sup> and was substituted by his heirs, namely: Isabel, Edgardo, Felicitas, Marytes and Bella, all surnamed Regunay, as party plaintiffs.<sup>[8]</sup> In their amended complaint, the heirs of Prudencio alleged, among others, that Prudencio was a bonafide tenant of the properties owned by Graciano Febre located in Nigatel, Patrocinio, San Narciso, Zambales, described as follows:

"A parcel of land located at (sic) Nigatel, Patrocinio, San Narciso, Zambales, with total area of .4625 square meters more or less. Bounded on the North by Heirs of Victorio Posadas, on the South by Heirs of Victorio Posadas, on the South by Felipe Rosete, and on the West by Graciano Febre, with total assessed value of P8,350.00, for the 1994, under tax declaration no. 005-0455A declared for taxation purposes in the name of Graciano Febre.

A parcel of land located at (sic) Nigatel, San Narciso Zambales, with total area of .2400 square meters more or less. Bounded on the North by Vicente Fontillas, on the South by Placido Rosete, & Tranquilino Balutin, on the West by Hrs. of Juana Fordan, with total assessed value of P4,340.00 for the year 1994, under tax declaration no. 005-0456A,

declared under the name of Graciano Febre.

"A parcel of land located at (sic) Nigatel, Patrocinio, San Felipe, Zambales, with total area of .3305 square meters more or less. Bounded on the North by Vicente Fontillas, on the South by Jose Rosete, on the East by Graciano Febre; on the West by Patrocinio Abrahano, under tax declaration no. 005-0457A, with total assessed value of P4,230.00 for the year 1994, declared under the name of Graciano Febre.

Prudencio had been cultivating the subject properties since 1947 up to the time when Mt. Pinatubo erupted in 1991. Prudencio likewise gave the corresponding rentals or shares of palay representing the share of the land owner Orlando Febre. After the death of Orlando Febre, he remitted the same to Mrs. Lilia Febre ("Febre"), sister of Fontillas. Sometime in June 1996, without Prudencio's consent and permission, Fontillas took over the subject properties and planted palay and other crops thereon. The matter was brought to the BARC, MARO and PARO of San Narciso, Zambales, for possible conciliation but the same proved futile. Prudencio at the time of the filing of the complaint was still physically and mentally capable of cultivating the land in question.<sup>[9]</sup>

In his Answer<sup>[10]</sup>, Fontillas admitted the fact that Prudencio cultivated the subject properties and gave the corresponding share of the landowner. Subsequently, however, Prudencio had been remiss in giving the rightful share as he gave only six (6) cavans of palay per year up to 1988. From 1988 to 1995, Prudencio never remitted any share. On 10 June 1995, Prudencio allowed Marcial Fetero to cultivate the land in question without his (Fontillas) consent. Prudencio admitted that he could no longer cultivate the land in question because of his age and poor health. Inevitably, Prudencio actually surrendered the subject properties.

On 10 September 1998, Napoleon Baguilat, OIC Regional Agrarian Reform Adjudicator for CAR and Presiding Adjudicator for South Nueva Ecija and Zambales, Region III, Balili, Iba, Zambales, rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered and in the best interest of agrarian justice, judgment is hereby rendered in favor of plaintiffs and against defendant, as follows:

1. Ordering herein defendant to immediately restore possession of the subject landholding in favor of the plaintiffs; and
2. Ordering herein defendant not to disturb peaceful possession and tillage of the subject property of herein plaintiffs."<sup>[11]</sup>

Aggrieved, Fontillas filed a *Notice of Appeal*<sup>[12]</sup> before the PARAD. In its Order<sup>[13]</sup> dated 21 January 1999, the PARAD dismissed the said appeal for failure of Fontillas to pay the required appeal fee as provided for under Section 5, Rule XIII of the DARAB New Rules of Procedure. Undaunted, Fontillas filed a *Motion for Reconsideration*<sup>[14]</sup> and prayed that he be allowed to pay the corresponding appeal fee. Thereafter, he filed *Supplemental Motion for Reconsideration and/or New Trial* with prayer for the issuance of a restraining order on the ground of mistake and excusable negligence.<sup>[15]</sup> Finding the said motion meritorious, the PARAD declared

moot and academic the Order dated 21 January 1999 and consequently gave due course to the notice of appeal previously filed by Fontillas.<sup>[16]</sup>

On 17 January 2001, the DARAB, Quezon City rendered the assailed Decision affirming the Decision of PARAD, the decretal portion of which reads:

"WHEREFORE, premises considered, the appealed decision dated 10 December (sic) 1998 is hereby AFFIRMED.

SO ORDERED<sup>[17]</sup>.

Not satisfied, Fontillas filed a *Motion for Reconsideration*<sup>[18]</sup> thereof but the same was denied by the DARAB in the assailed Resolution dated 31 July 2002.<sup>[19]</sup>

Finding the foregoing decision unacceptable, Fontillas (now petitioner) commenced the instant petition asserting that Prudencio during his lifetime voluntarily surrendered and abandoned his rights over the land in dispute due to his age and poor health.

This brings Us to the focal issue: Did Prudencio voluntarily surrender or abandon his rights as tenant over the disputed properties?

***We rule in the negative. A fortiori, the petition lacks merit.***

To protect the tenant's right to security of tenure, under Section 8 of Republic Act No. 3844,<sup>[20]</sup> voluntary surrender, as a mode of extinguishing agricultural leasehold tenancy relations, must be convincingly and sufficiently proved by competent evidence. The tenant's intention to surrender the landholding cannot be presumed, much less determined by mere implication. Otherwise, the right of a tenant to security of tenure becomes an illusory one.<sup>[21]</sup> Tenancy relations cannot be bargained away except for the strong reasons provided by law which must be convincingly shown by evidence in line with the State's policy of achieving a dignified existence for the small farmers free from pernicious institutional restraints and practices.<sup>[22]</sup> Further, for abandonment to exist, the following requisites must be proven: (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. There must be an actual, not merely a projected, relinquishment; otherwise, the right or claim is not vacated or waived and, thus, susceptible of being appropriated by another. Administrative Order No. 2, issued on March 7, 1994 defines abandonment or neglect as a "willful failure of the agrarian reform beneficiary, together with his farm household, to cultivate, till or develop his land to produce any crop, or to use the land for any specific economic purpose continuously for a period of two calendar years."<sup>[23]</sup> The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.<sup>[24]</sup>

In the case at bench, other than his bare allegations, petitioner adduced no competent and convincing evidence to show that Prudencio voluntarily surrendered his landholding. The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.<sup>[25]</sup>