

FIFTH DIVISION

[CA-G.R. SP NO. 73442, August 11, 2006]

**MELCHOR BOJANGIN, JR., PETITIONER, VS. VICTORIANO
ENCARNACION, RESPONDENT.**

D E C I S I O N

BARRIOS, J.:

In this Petition for Review, the petitioner Melchor Bojangan, Jr. (or Bojangan for brevity) asks that the decision of the Regional Trial Court (or RTC) stationed in Cauayan City, Province of Isabela, which affirmed in toto the judgment favorable to the respondent Victoriano Encarnacion (or Encarnacion) rendered by the Municipal Trial Court (or MTC) of the same place, be reversed and set aside.

The subject of contention of this suit are two parcels of land with a combined area of 707 square meters, covered by Transfer Certificates of Title Nos. T-206050 and T-206051 issued by the Register of Deeds of Isabela in the name of Encarnacion. These two TCTs were derived from Original Certificate of Title No. P-62724, also issued in the name of Encarnacion.

On March 2, 2001, Encarnacion filed a case for *Ejectment, Damages with Injunction and Prayer for Restraining Order* (Annex "F", pp. 47-51, rollo) against Bojangan alleging that he refused to vacate his said lots.

Tracing the ownership of these properties before they were subdivided, Encarnacion averred that Rogelio Valiente was the original owner of the property and sold this to Nicasio Mallapitan on January 18, 1982. Nicasio Mallapitan then sold it on March 21, 1985 to Victoriano Magpantay, the father-in-law of Encarnacion. On April 11, 1995 Victoriano Magpantay's wife Anita waived her rights and interest over the properties in favor Encarnacion. On the basis of the Waiver of Rights, Encarnacion filed his public land application before the DENR Office of Cauayan, Isabela, averring that he and his father-in-law have been in actual possession of the property since 1985 and that he had been paying the real taxes thereon.

According to Encarnacion, in the latter part of 1985 Bojangan without permission entered a portion of the properties and which he has been occupying up to this time without any consideration and for a while upon their tolerance. A demand was already since made by Encarnacion on Bojangan on February 1, 2001 to vacate the premises, but he refused to do so. Encarnacion referred the matter to the barangay authorities in District 1, Cauayan, Isabela, but no settlement was reached hence a Barangay Certification to File Action was issued. Encarnacion sought the help of a lawyer who sent a demand letter to Bojangan to leave the premises but still he refused to yield. Resultantly, the present action was filed. He alleged that the continued stay of Bojangan in the premises causes him great and irreparable injury hence his possession should be immediately restored.