Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

J.V. LAGON REALTY CORP., represented by NENITA L. LAGON in her capacity as President,
Petitioner,

- versus -

HEIRS OF LEOCADIA VDA. DE TERRE, namely: PURIFICACION T. BANSILOY, EMILY T. CAMARAO, and DOMINADOR A. TERRE, as represented by DIONISIA T. CORTEZ,
Respondents.

G.R. No. 219670

Present:

VELASCO, JR., *J.*, *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

June 27, 2018

x - x

DECISION

MARTIRES, *J.*:

The existence of a tenancy relationship cannot be presumed, and claims that one is a tenant do not automatically give rise to security of tenure.[1]

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the 23 March 2015 Decision[2] and

1 *Landicho v. Sia*, 596 Phil. 658, 677 (2009).
2 *Rollo*, pp. 30-40.

29 July 2015 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 05331-MIN. The assailed issuances affirmed *in toto* the 13 April 2012 Decision[4] of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 14553.

THE FACTS

The case stemmed from a complaint for illegal ejectment, payment of disturbance compensation, and damages filed by Leocadia Vda. De Terre *(Leocadia)* against petitioner J.V. Lagon Realty Corporation *(J.V. Lagon)* before the Provincial Adjudicator *(PARAD)*, docketed as DARAB Case No. R-1205-0001-97.

It was alleged in the complaint that sometime in 1952, Antonio Pedral *(Pedral)* instituted Leocadia and her spouse, Delfin Terre *(the spouses Terre))*,[5] to work as share tenants over his 5-hectare agricultural landholding known as Lot 587 located at Tacurong, Sultan Kudarat. Three (3) years later, Pedral sold the land to Jose Abis *(Abis)* who, in turn, sold the same to Augusto Gonzales *(Gonzales)* in 1958.

During the said transfers of ownership, the spouses Terre were allegedly retained as tenants of the entire 5-hectare landholding. In the 1960s, Gonzales reduced their tillage to 2.5 hectares, and the other half of the land was given to Landislao Bedua and Antonillo Silla to till. On their 2.5 hectares, the Spouses Terre constructed a house and that of their daughter's.

In 1988, the spouses Terre were surprised when they were informed that J.V. Lagon had already bought the entire 5-hectare land from the heirs of Gonzales. Later on, J.V. Lagon constructed a scale house within the 2.5 hectare land tilled by the spouses Terre. In 1989, J.V. Lagon warned the spouses to stop cultivating the land because the whole lot was to be developed for commercial or industrial use. In that same year, Delfin died, purportedly due to mental anguish over the turn of events. In 1990, J.V. Lagon filled the eastern portion of the land with earth and boulders.

On 7 May 1991, Leocadia filed a complaint before the Barangay Agrarian Reform Committee *(BARC)*. The following day, on 8 May 1991, a complaint was also lodged before the Municipal Agrarian Reform Officer *(MARO)*. No appropriate action, however, was taken on the said complaints

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3 Id. at 41-47.

4 Id. at 90-99; penned by DARAB member Jim G. Coleto.

5 Collectively referred to as "Spouses Terre."

until the dispute was eventually brought before the PARAD on 19 June 1997.[6]

Leocadia claimed that the works done by J.V. Lagon were tantamount to conversion of the land for non-agricultural purposes. Also, Leocadia averred that she was not duly notified in writing about the sale between Gonzales and J.V. Lagon. Thus, her 180-day right of redemption pursuant to Section 12 of Republic Act *(R.A.)* No. 3844, as amended by R.A. No. 6389,[7] did not commence. Accordingly, it was prayed that she be allowed to exercise her right of redemption over the land, the expenses thereof to be shouldered by the Land Bank of the Philippines.

In her bid to prove the existence of tenancy, Leocadia relied, *inter alia*, on the following documents: (a) 23 April 1997 Certification issued by Geronimo P. Arzagon, Municipal Mayor of Tacurong, Sultan Kudarat, certifying that the spouses Terre were actual tenants of the land;[8] (b) Pedral's affidavit dated 4 July 1987, confirming his consent for the spouses Terre to be his agricultural tenants at a 70-30 sharing of harvest in their favor;[9] (c) affidavit dated 28 July 1997, executed by MARO Perfecto Bergonia, Jr. stating that Terre, a tenant, filed a complaint on 7 July 1991, concerning her illegal ejectment.[10]

On the other hand, J.V. Lagon countered that Leocadia had no cause of action simply because there was no tenancy to speak of. J.V. Lagon asseverated that Lot 587 had ceased to be agricultural and was already classified as commercial, the same having been utilized as the site of the Rural Bank of Tacurong. Also, at the time the landholding was purchased from Gonzales in 1988, no tenant was found cultivating the land.

Further, J.V. Lagon argued that there was a dearth of evidence to prove the allegation of tenancy, in that it was not even established as to whom Leocadia had paid rentals to. In the same vein, it raised the

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6 *Rollo*, pp. 30-31.

7 Code of Agrarian Reforms of the Philippines.
Sec. 12. Lessee's right of Redemption. - In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: Provided, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of the redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.
x x x x

8 *Rollo*, pp. 35, 55.

9 Id.

10 Id. at 55.

affirmative defense of prescription, contending that the complaint was filed more than three (3) years after the cause of action accrued in 1988.

The PARAD Ruling

In its 3 April 2002 decision,[11] the PARAD ruled in favor of J.V. Lagon. It opined that Leocadia's complaint was already barred by prescription and laches, as the cause of action accrued in 1988 when J.V. Lagon constructed a scale house in the allegedly tenanted area. Also, the PARAD ruled that the filing of the complaint with the MARO in 1991 did not toll the running of the prescriptive period because it was the DARAB that had jurisdiction over agrarian disputes.

With respect to the issue on redemption, the PARAD observed that as vendee, J.V. Lagon failed to give Leocadia a written notice of the sale. Nevertheless, it resolved to deny the claim for redemption on the finding that Leocadia had actual knowledge of the sale as early as 1988 when she confronted J.V. Lagon about the scale house.

Anent the question of whether there was tenancy, the PARAD held that Leocadia failed to establish her status as a *de jure* tenant. It found scant evidentiary value on the documents she presented. In so ruling, the PARAD pointed out that Pedral, as former owner, could attest to the condition of the land only from 1947 to 1955 when he was still the owner thereof, and not after he had already sold the property. Moreover, the PARAD was of the view that certifications issued by administrative agencies or officers as regards tenancy relations are merely provisional in nature.

Finally, the PARAD was convinced that the disputed real property was not an agricultural land. It noted that the Rural Bank of Tacurong was situated at the heart of the subject landholding; and that per photocopy of the Urban Land Use Plan as certified by the Office of the City Planning and Development Coordinator, the said land was already classified as commercial.[12] The dispositive portion reads:

> **WHEREFORE**, PREMISES CONSIDERED, judgement is hereby rendered:
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> 1. Declaring the herein complaint filed on June 17, 1991 barred by prescription;

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[11] Id. at 49-77; penned by Adjudicator Henry M. Gelacio,.

[12] Id. at 74.

2. Complainant's claim for disturbance compensation is denied for lack of merit;

3. Complainant's right to redeem the property is also denied for lack of merit; and,

4. Other claims are likewise denied for lack of merit.

No costs.

SO ORDERED.

Aggrieved, Leocadia filed an appeal before the DARAB.

The DARAB Ruling

In its 13 April 2012 decision, the DARAB reversed and set aside the PARAD's ruling. It held that Leocadia's action was not barred by prescription because the filing of the complaint with the BARC on 7 May 1991 tolled the running of the prescriptive period.

In contrast to the PARAD's analysis, the DARAB found probative value on the documents Leocadia presented. It concluded that tenancy existed, as evinced by the fact that Leocadia's house was erected inside the subject landholding; and such fact was attested to by the affidavits of the former MARO Perfecto Bergonia and of Mayor Geronimo P. Arzagon of Tacurong City.[13]

Similarly, the DARAB opined that Pedral's affidavit declaring that he installed the Spouses Terre as share tenants sufficiently proved the existence of tenancy relationship. Citing Section 10 of R.A. No. 3844,[14] it held that tenancy is attached to the land regardless of whoever may have become the owner thereof. Thus, Leocadia's status as a tenant was not extinguished by the successive transfers of ownership from Pedral to Abis, and then to Gonzales, and finally to J.V. Lagon, as the latter assumed the rights and obligations of the preceding transferors.

The DARAB further ruled that Leocadia was entitled to redeem the land from J.V. Lagon. It cited Section 12 of R.A. No. 3844, as amended by

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13 Id. at 96.

14 Section 10. Agricultural Leasehold Relation Not Extinguished by Expiration of Period, etc. - The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

R.A. No. 6389[15] which provides that the right of redemption may be exercised within 180 days from notice in writing which shall be served by the vendee on all lessees affected and on the DAR upon registration of the sale. In view of the PARAD's finding that J.V. Lagon failed to give notice in writing of the sale, the DARAB declared that Leocadia's right of redemption did not prescribe, a written notice of the sale being an indispensable requirement of the law.

Lastly, Leocadia's prayer for disturbance compensation was granted. The DARAB ratiocinated that J.V. Lagon merely alleged that the land was no longer agricultural; and that J.V. Lagon failed to support its allegation as no tax declarations, DAR certification or city zoning certification were shown to prove the land's classification as commercial. The decretal portion reads:

> **WHEREFORE**, premises considered, the appealed decision dated April 3, 2002 and Resolution dated December 13, 2002 are hereby **REVERSED** and **SET ASIDE** and a new judgment rendered:
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> 1. Declaring herein complainant a *bona fide* tenant over the lot in suit entitled to security of tenure;
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> 2. Upholding complainant's right of redemption and for this purpose, the Land Bank of the Philippines, thru its Regional branch or office concerned is directed to finance her right of redemption;
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> 3. In case the land in suit had already been lawfully converted to commercial use, complainant is entitled to payment of disturbance compensation pursuant to Section 36, par. 1 of RA 6389.
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> No pronouncement as to claims and counterclaims for insufficient evidence.

Dissatisfied, J.V. Lagon filed a Rule 43 petition for review before the CA. Meanwhile, on 18 October 2013, Leocadia died, prompting her heirs to file a manifestation with motion for substitution[16] before the CA.

The CA Ruling

In the assailed 23 March 2015 decision, the CA affirmed *in toto* the DARAB's ruling. It held that Leocadia was able to establish that she was the tenant of the subject landholding. Such tenancy commenced in 1952 when

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15 Supra note 7.

16 *Rollo*, pp. 193-198.

Pedral, the original owner, installed her and Delfin as share tenants. The appellate court espoused a similar view that the documents Leocadia presented substantiated her claim of tenancy.

Considering that there was tenancy between Pedral and Leocadia, the CA decreed that there was subrogation of rights to Abis, then to Gonzales, and finally to J.V. Lagon, as landowners. The tenancy relationship was not terminated by changes of ownership pursuant to Section 10 of R.A. No. 3844.[17] Likewise, the CA sustained the DARAB's finding that, as a tenant, Leocadia was entitled to redeem the land consequent to the lack of written notice of the sale. The *fallo* reads:

> **WHEREFORE**, the appeal is DENIED. The Decision dated April 13, 2012 and the Resolution dated September 13, 2012 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 14553 declaring Leocadia Vda. De Terre as bona fide tenant under Republic Act No. 3844 is AFFIRMED IN TOTO.
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> x x x x
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> **SO ORDERED.**[18]

In the assailed 29 July 2015 Resolution, the CA resolved to deny J.V. Lagon's motion for reconsideration, and to grant the motion for substitution filed by the heirs of Leocadia.[19]

The Present Petition

J.V. Lagon submits in this petition for review on certiorari, that the subject landholding is no longer agricultural; that Leocadia's cause of action has already prescribed; and that she has no right to redeem the property nor to receive disturbance compensation. Stripped to its core, the petition before the Court posits the kernel argument that there is no tenancy relation between J.V. Lagon and Leocadia.

In their comment, the heirs of Leocadia contend that there is no need to adduce evidence to prove Leocadia's status as a *bona fide* tenant because tenancy is attached to the land irrespective of whoever becomes its subsequent owner. Taking cue from the DARAB's findings, they maintain that the filing of the complaint with the BARC on 7 May 1991 tolled the running of the prescriptive period. As a final point, the heirs of Leocadia

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17 Supra note 14.
18 *Rollo*, p. 39.
19 Id. at 47.

assert that she is entitled to redeem the landholding because the law speaks of written notice of the sale and not actual or personal knowledge thereof.

The pleadings and the arguments proffered beckon the Court to examine a singular point of law on which all the matters raised are inevitably hinged.

ISSUE

WHETHER OR NOT THERE IS A TENANCY RELATIONSHIP BETWEEN J.V. LAGON REALTY AND LEOCADIA.

THE COURT'S RULING

The petition is impressed with merit.

There is a tenancy relationship if the following essential elements concur: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee.[20]

All of the above requisites are indispensable in order to create or establish tenancy relationship between the parties. The absence of at least one requisite does not make the alleged tenant a *de facto* one, for the simple reason that unless an individual has established one's status as a *de jure* tenant, he is not entitled to security of tenure guaranteed by agricultural tenancy laws.[21]

The *onus* rests on Leocadia to prove her affirmative allegation of tenancy.[22] It is elementary that one who makes an affirmative allegation of an issue has the burden of proving the same; and in the case of the plaintiff in a civil case, the burden of proof never parts. The same rule applies in proceedings before the administrative tribunals. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.[23]

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20 *Nicorp Management and Development Corp. v. De Leon*, 585 Phil. 598, 605 (2008).
21 *Ludo and Luym Development Corporation v. Barreto*, 508 Phil. 385, 396-397 (2005).
22 *Soliman v. Pasudeco*, 607 Phil. 209, 224 (2009).
23 Id.

To recapitulate, Leocadia presented the following documents to prove the existence of tenancy: (a) 23 April 1997 certification issued by Geronimo P. Arzagon, Municipal Mayor of Tacurong, Sultan Kudarat, that the Spouses Terre were actual tenants of the land; (b) Pedral's affidavit dated 4 July 1987 confirming his consent for the Spouses Terre to be his agricultural tenants at a 70-30 sharing of harvest in their favor; (c) affidavit dated 28 July 1997, executed by MARO Perfecto Bergonia, Jr. stating that Terre, a tenant, filed a complaint on 7 July 1991, concerning her illegal ejectment.

The issue of tenancy, whether a person is an agricultural tenant or not, is generally a question of fact. To be precise, however, the existence of a tenancy relationship is a legal conclusion based on facts presented corresponding to the statutory elements of tenancy.[24] Both the DARAB and the CA appreciated the aforementioned pieces of evidence as sufficient to prove Leocadia's *de jure* status as a tenant in the subject landholding.

This is untenable.

Accordingly, it is crucial to go through the evidence and documents on record in order to arrive at a proper resolution of the case.

Pedral's affidavit does not prove that there is tenancy between Leocadia and J.V. Lagon.

It is a basic rule in evidence that a witness can testify only on the facts that are of his own personal knowledge; that is, those which are derived from his own perception.[25] Therefore, even if the Court were to take hook, line, and sinker Pedral's declaration that he installed Leocadia and Delfin as tenants, such declaration may be accorded probative value only during the interim period within which he was the owner of the land. The logic behind is simple, *i.e.*, Pedral ceased to have any personal knowledge as to the status and condition of the land after he had sold the same to Abis. Put differently, absence of personal knowledge rendered Pedral an incompetent witness to testify on the existence of tenancy from the moment the land was passed on to Abis and his subsequent transferees.

To recall, the land was involved in three transfers over the course of 33 years, to wit: Pedral to Abis, Abis to Gonzales, and finally from Gonzales to J.V. Lagon. This series of transfers shows that Pedral was not J.V.

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[24] *Monico Ligtas v. People*, 766 Phil. 750, 775 (2015).
[25] *People v. Restituo Manhuyod, Jr.*, 352 Phil. 866, 880 (1998).

Lagon's immediate predecessor-in-interest. When J.V. Lagon became the absolute owner of the land, it was subrogated to the rights and obligations of Gonzales, not Pedral's. Gonzales was the person privy to the sale that brought forth J.V. Lagon's ownership. In short, title to the land was derived from Gonzales. This being the case, the DARAB and the CA erred when they relied upon Pedral's affidavit to support the conclusion that J.V. Lagon acquired a tenanted land. Whether or not the land was tenanted at the time of J.V. Lagon's entry is a matter already beyond the competence of Pedral to testify on.

Leocadia anchors her claim against J.V. Lagon on Section 10 of the Agricultural Land Reform Code which, in essence, states that the existence of an agricultural leasehold relationship is not terminated by changes in ownership in case of sale or transfer of legal possession.[26] The fundamental theory of her case parlays the notion that she was an agricultural lessee during the period of Abis' and Gonzales' respective ownership of the land spanning from 1955-1988; such that at the time J.V. Lagon came into possession, there was a subsisting tenancy which the latter assumed by operation of law.

The evidence on record, however, is bereft of any affirmative and positive showing that tenancy was maintained on the land throughout the three decades leading to J.V. Lagon's acquisition in 1988. Before Leocadia's claims against J.V. Lagon can prosper, it must first be established that the latter acquired land which was tenanted. On this premise, the scope of judicial inquiry inexorably backtracks to Gonzales' epoch. Were there agricultural tenants on the land during Gonzales' ownership? The answer could have easily been supplied by none other than Gonzales himself who was in the best position to attest on the status of the land acquired by J.V. Lagon. A testimony or an affidavit from Gonzales would have served to substantiate Leocadia's allegation that she had been a tenant on the land prior to J.V. Lagon's entry. Unfortunately, the record only contains an affidavit from Pedral, a person whose ownership of the land is, borrowing Justice Leonen's term, "*thrice-removed*" from J.V. Lagon.

Being the party alleging the existence of tenancy relationship, Leocadia carried the burden of proving her allegation. With only Pedral's affidavit as proof, the Court is unable to agree with the DARAB and the CA that tenancy was established by substantial evidence. As explained above, Pedral's affidavit leaves much to be desired, and it is inadequate basis to support a conclusion that Leocadia remained as a tenant on the land throughout the three decades preceding J.V. Lagon's ownership. Agricultural tenancy is not presumed.[27] It is a matter of jurisprudence that

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[26] *Planters Development Bank v. Francisco Garcia,* 513 Phil. 294, 307 (2005).
[27] *Caluzor v. Llanillo*, 762 Phil. 353, 368 (2015).

tenancy is not purely a factual relationship dependent on what the alleged tenant does upon the land.[28] More importantly, it is a legal relationship the existence of which must be proven by the quantum of evidence required by law.

Absence of harvest sharing belies claim of tenancy relationship.

In *Landicho v. Sia*,[29] the Court declared that independent evidence, such as receipts, must be presented to show that there was a sharing of the harvest between the landowner and the tenant. *Bejasa v. CA*[30] similarly held that to prove sharing of harvests, a receipt or any other evidence must be presented, as self-serving statements are deemed inadequate. Proof must always be adduced.[31] In another case, the Court ruled against the existence of tenancy for failure of the alleged tenant to substantiate the element of sharing of harvest, *viz*:

> Here, there was no evidence presented to show sharing of harvest in the context of a tenancy relationship between Vicente and the respondents. The only evidence submitted to establish the purported sharing of harvests were the allegations of Vicente which, as discussed above, were self-serving and have no evidentiary value. Moreover, petitioner's allegations of continued possession and cultivation do not support his cause. It is settled that mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farm worker into an agricultural tenant recognized under agrarian laws. It is essential that, together with the other requisites of tenancy relationship, the agricultural tenant must prove that he transmitted the landowner's share of the harvest.[32]

The DARAB and the CA committed reversible error when they failed to notice that not a single receipt or any other credible evidence was adduced to show sharing of harvest in the context of tenancy. The record only contains the allegation that there is a 1/3-2/3 system of harvest sharing with Pedral, and 70-30 for Abis and Gonzales.[33] Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing.[34] As reiterated in *VHJ Construction v. CA*,[35]

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28 *Berenguer, Jr. v. CA*, 247 Phil. 398, 405 (1988).
29 Supra note 1 at 679.
30 390 Phil. 499, 508 (2000).
31 *Heirs of Nicolas Jugalbot v. CA*, 547 Phil. 113, 125 (2007).
32 *Vicente Adriano v. Alice Tanco,* 637 Phil. 218, 228-229 (2010).
33 *Rollo*, p. 307.
34 *Soliman v. Pasudeco*, supra note 22 at 223-224.
35 480 Phil. 28, 36-37 (2004).

> In *Berenguer, Jr. v. Court of Appeals*, we ruled that the respondents' self-serving statements regarding tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. There must be substantial evidence on record adequate enough to prove the element of sharing.
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> xxx
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> To prove such sharing of harvests, a receipt or any other evidence must be presented. Self-serving statements are deemed inadequate; competent proof must be adduced.

Further to the lack of receipts, the record is likewise devoid of testimony from either Pedral, Abis or Gonzales acknowledging the fact that they received a share in the harvest of a tenant. In the absence of receipts or any concrete evidence from which it can be inferred that Leocadia transmitted the landowner's share of her produce, the Court is constrained to declare that not all elements of tenancy relationship are present.

The MARO's affidavit and the municipal mayor's certification do not prove tenancy.

It is well-entrenched in our jurisprudence that certifications of administrative agencies and officers declaring the existence of a tenancy relation are merely provisional. They are persuasive but not binding on the courts, which must make their own findings.[36] As held in *Soliman v. PASUDECO (Soliman)*:[37]

> The certifications attesting to petitioners' alleged status as *de jure* tenants are insufficient. In a given locality, the certification issued by the Secretary of Agrarian Reform or an authorized representative, like the MARO or the BARC, concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the judiciary.

The ruling in *Soliman* was echoed in the later case of *Automat Realty v. Spouses Dela Cruz*,[38] *viz*:

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36 *Oarde v. CA*, 345 Phil. 457, 469 (1997).
37 Supra note 22.
38 744 Phil. 731, 744 (2014).

> This court has held that a MARO certification concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the judiciary.
>
> Several elements must be present before the courts can conclude that a tenancy relationship exists. MARO certifications are limited to factual determinations such as the presence of actual tillers. It cannot make legal conclusions on the existence of a tenancy agreement.

The Court's pronouncement in the foregoing cases applies with equal force to the certification issued by the municipal mayor of Tacurong. Like the MARO's affidavit, the municipal mayor's certification deserves scant consideration simply because the mayor is not the proper authority[39] vested with the power to determine the existence of tenancy. Besides, the MARO and the mayor merely affirmed the fact that Leocadia lived in a hut erected on the subject landholding.[40] If we subscribe to the DARAB's fallacy, then anyone who squats on an agricultural land or constructs a hut with the consent of the owner becomes a tenant. It bears to stress that mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farmworker into an agricultural tenant recognized under agrarian laws.[41]

While tenancy presupposes physical presence of a tiller on the land, the MARO's affidavit and the mayor's certification fall short in proving that Leocadia's presence served the purpose of agricultural production and harvest sharing. Again, it cannot be overemphasized that in order for a tenancy to arise, it is essential that all its indispensable elements must be present.[42]

All told, the evidence on record is inadequate to arrive at a conclusion that Leocadia was a *de jure* tenant entitled to security of tenure. The requisites for the existence of a tenancy relationship are explicit in the law, and these elements cannot be done away with by conjectures.[43]

As a final word, the Court sees no more reason to belabor the other points raised by the parties, particularly on the right of redemption and entitlement to disturbance compensation. It is the juridical tie of tenancy relationship that breathes life to these kindred rights provided for by our agricultural laws. There being no tenancy relationship, the issues raised on these points have thus become moot and academic.

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39 *Esquivel v. Atty. Reyes*, 457 Phil. 509, 518 (2003).
40 *Rollo*, p. 96 DARAB decision,
41 *De Jesus v. Moldex Realty*, 563 Phil. 625, 630 (2007).
42 *Jopson v. Mendez*, 723 Phil. 580, 588 (2013).
43 *Soliman v. PASUDECO*, supra note 22 at 227.

WHEREFORE, the petition is **GRANTED**. The assailed 23 March 2015 Decision and 29 July 2015 Resolution of the CA in CA-G.R. SP No. 05331-MIN are hereby **VACATED** and **SET ASIDE**, and a new one is entered **DISMISSING** the complaint against petitioner J.V. Lagon Realty Corporation.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R. A. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 24 2018

THIRD DIVISION

G.R. No. 219670 – J.V. LAGON REALTY CORP., represented by Nenita L. Lagon, in her capacity as President, *petitioner* v. HEIRS OF LEOCADIA VDA. DE TERRE, namely: Purificacion T. Bansiloy, Emily T. Camarao, and Dominador A. Terre, as represented by Dionisia T. Cortez, *respondents*.

Promulgated:
June 27, 2018

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DISSENTING OPINION

LEONEN, *J.*:

As found by the Department of Agrarian Reform Adjudication Board and affirmed by the Court of Appeals, the deceased Leocadia Vda. de Terre (Vda. de Terre) sufficiently established her status as *de jure* tenant of the landholding sold to J.V. Lagon Realty Corp. (J.V. Lagon). There was no showing that the leasehold relation was extinguished under any of the grounds provided by law; hence, Vda. de Terre enjoyed security of tenure on the land, this notwithstanding the successive transfers of the property. Even assuming that the landholding was legally converted for commercial purposes, there was also no allegation that a court of competent jurisdiction has ordered in a final and executory judgment the ejection of Vda. de Terre as tenant. The agricultural leasehold relation, thus, subsists and the heirs of Vda. de Terre may still redeem the landholding from J.V. Lagon or should be paid disturbance compensation.

I

Tenancy as a system of landholding began during the Spanish period. Before the Spanish arrived, land was owned in common by barangay inhabitants, who then had equal access to the land and equally shared in the fruits of its production.[1] This regime was replaced when the Spanish introduced the concept of private property. They began purchasing communal lands from the heads of the barangays and had these properties registered in their names for purposes of ownership.[2] As for the uninhabited

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1 R.P. BARTE, LAW ON AGRARIAN REFORM 6–7 (2003). *See also* FAQs on Agrarian History 3 (2013), downloadable from <www.dar.gov.ph/downloads/category/82-faqs?download=837:faqs-on-ar-history> (Last accessed on June 25, 2018).

2 Id. at 7.

lands, royal decrees were issued and these tracts of land were all declared owned by the Spanish crown.[3]

These tracts of land were awarded either to friars, Spanish military personnel, or caretakers called encomenderos.[4] Natives were not allowed to own land and for them to get a share of the crops, they were required to pay tribute to the encomenderos to till the land under the encomenderos' supervision.[5]

From the small-scale food production in the encomienda, the hacienda system was evolved to serve the international market. Spanish colonies such as the Philippines became exporters of agricultural raw products, including plant and animal products.[6] Natives were still prohibited from owning land, but the larger demand for products meant that more natives were displaced from their homes. Families of natives became slaves, either as *aliping namamahay* or *aliping sagigilid*, pushed into forced labor to survive.[7]

The encomienda and hacienda systems were the colonial equivalents of share tenancy, the relationship where two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing to any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant.[8]

Agricultural share tenancy was then abolished by Republic Act No. 3844,[9] which declared that system contrary to public policy.[10] The amendatory law to Republic Act No. 3844, Republic Act No. 6389,[11] automatically converted all agricultural share tenancy relations in the country to agricultural leasehold and revolutionized the meaning of security of tenure of landholding.[12]

In an agricultural leasehold relation, the agricultural lessor, who is either the owner, civil law lessee, usufructuary, or legal possessor, lets or grants to another, called the agricultural lessee, the cultivation and use of his land for a price certain in money or in produce or both. The definition and

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3 Id.

4 FAQs on Agrarian History 4–5 (2013), downloadable from <www.dar.gov.ph/downloads/category/82-faqs?download=837:faqs-on-ar-history> (Last accessed on April 13, 2018).

5 Id. at 5. *See also* R.P. Barte, Law on Agrarian Reform 7 (2003).

6 Id.

7 R.P. Barte, Law on Agrarian Reform 7 (2003).

8 Rep. Act No. 3844, sec. 166(25).

9 Otherwise known as the Agricultural Land Reform Code

10 Rep. Act No. 3844, sec. 4.

11 Renamed Rep. Act No. 3844 as the Code of Agrarian Reforms of the Philippines.

12 Rep. Act No. 6389, sec. 1, amending Rep. Act No. 3844, sec. 4.

elements of a leasehold relation are almost the same as those of share tenancy.[13] However, unlike the latter, an agricultural leasehold relation is not extinguished either by the mere expiration of the term or period of the leasehold contract or by the sale, alienation, or transfer of legal possession of the land. Section 10 of Republic Act No. 3844 provides:

> Section 10. *Agricultural Leasehold Relation Not Extinguished By Expiration of Period, etc.* — The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

Based on Section 10, the agricultural lessor is, thus, not prohibited from disposing of his or her property should he or she wishes to do so. What happens is that "the purchaser or transferee . . . shall be subrogated to the rights and substituted to the obligations of the agricultural lessor." For his or her part, the agricultural lessee shall have either the right to pre-empt the sale and purchase the property under reasonable terms and conditions[14] or the right to redeem the property from the transferee should the property have been sold without his or her knowledge. Section 12 of Republic Act No. 3844, as amended by Republic Act No. 6389, provides:

> Section 12. *Lessee's Right of Redemption.* — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the

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[13] *See Cuaño v. Court of Appeals*, 307 Phil. 128, 141 (1994) [Per J. Feliciano, Third Division].

[14] Republic Act No. 3844, sec. 11, as amended by Republic Act No. 6389, provides:
Section 11. *Lessee's Right of Pre-emption.* — In case the agricultural lessor decides to sell the landholding, the agricultural lessee shall have the preferential right to buy the same under reasonable terms and conditions: *Provided*, That the entire landholding offered for sale must be pre-empted by the Department of Agrarian Reform upon petition of the lessee or any of them: *Provided, further*, That where there are two or more agricultural lessees, each shall be entitled to said preferential right only to the extent of the area actually cultivated by him. The right of pre-emption under this Section may be exercised within one hundred eighty days from notice in writing, which shall be served by the owner on all lessees affected and the Department of Agrarian Reform.
If the agricultural lessee agrees with the terms and conditions of the sale, he must give notice in writing to the agricultural lessor of his intention to exercise his right of pre-emption within the balance of one hundred eighty day's period still available to him, but in any case not less than thirty days. He must either tender payment of, or present a certificate from the land bank that it shall make payment pursuant to section eighty of this Code on, the price of the landholding to the agricultural lessor. If the latter refuses to accept such tender or presentment, he may consign it with the court.
Any dispute as to the reasonableness of the terms and conditions may be brought by the lessee or by the Department of Agrarian Reform to the proper Court of Agrarian Relations which shall decide the same within sixty days from the date of the filing thereof: *Provided*, That upon finality of the decision of the Court of Agrarian Relations, the Land Bank shall pay to the agricultural lessor the price fixed by the court within one hundred twenty days: *Provided, further*, That in case the Land Bank fails to pay within that period, the principal shall earn an interest equivalent to the prime bank rate existing at the time.
Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.
Any petition or request for pre-emption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

> latter shall have the right to redeem the same at a reasonable price and consideration: *Provided*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of the redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.
>
> Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.
>
> Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

The grounds for extinguishing the agricultural leasehold relation are provided in Section 8 of Republic Act No. 3844, thus:

> Section 8. *Extinguishment of Agricultural Leasehold Relation.* — The agricultural leasehold relation established under this Code shall be extinguished by:
>
> (1) Abandonment of the landholding without the knowledge of the agricultural lessor;
>
> (2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or
>
> (3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.

Apart from the grounds in Section 8, the leasehold relation may be terminated by the agricultural lessee under Section 28 of Republic Act No. 3844:

> Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year.* — The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:
>
> (1) Cruel, inhuman or offensive, treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;

> (2) Non-compliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of this Code or by his contract with the agricultural lessee;
>
> (3) Compulsion of the agricultural lessee or any member of his immediate farm household by the agricultural lessor to do any work or render any service not in any way connected with farm work or even without compulsion if no compensation is paid;
>
> (4) Commission of a crime by the agricultural lessor or his representative against the agricultural lessee or any member of his immediate farm household; or
>
> (5) Voluntary surrender due to circumstances more advantageous to him and his family.

Lastly, the agricultural lessee may be ejected from the landholding, thus, extinguishing the leasehold relation, but only upon a final and executory judgment of a competent court. Section 36 of Republic Act No. 3844, as amended by Republic Act No. 6389, states:

> Section 36. *Possession of Landholding; Exceptions.* — Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:
>
> (1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;
>
> (2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;
>
> (3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;
>
> (4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

> (5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;
>
> (6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or
>
> (7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

The same Section 36, in item 1, provides that an agricultural lessee may be ejected should the landholding be converted for uses for other non-agricultural classifications, i.e., residential, commercial, or industrial. However, the agricultural lessee must be paid disturbance compensation equivalent to five (5) times the average of the gross harvests on his landholding during the last five (5) preceding calendar years.

These rights under Republic Act No. 3844—to pre-empt the sale of the landholding, to redeem the landholding sold without his or her knowledge, and to be paid disturbance compensation should the land be converted for non-agricultural purposes—remain available to the agricultural lessee. Of the provisions of Republic Act No. 3844, only Section 35 was repealed by the present legislation governing agrarian relations, the Comprehensive Agrarian Reform Law.[15] Add Section 53 of Republic Act No. 3844, which was repealed by Republic Act No. 9700 that amended the Comprehensive Agrarian Reform Law.[16] In effect, the rest of the provisions of Republic Act No. 3844, as amended, still has suppletory application.[17]

II

The *ponencia* held that Vda. de Terre failed to prove her contention that she was a *de jure* tenant of the land sold to J.V. Lagon. In so holding, the *ponencia* first enumerated the jurisprudentially[18] established elements of a tenancy relationship—the parties are the landowner and the tenant or agricultural lessee; the subject matter of the relationship is an agricultural land; there is consent between the parties to the relationship; the purpose of

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15 Rep. Act No. 6657, sec. 76.
16 Rep. Act No. 9700, sec. 32.
17 Rep. Act No. 6657, sec. 75.
18 *Nicorp Management and Development Corp. v. De Leon*, 585 Phil. 598, 605 (2008), *cited by the Ponencia*, p. 8.

the relationship is to bring about agricultural production; there is personal cultivation on the part of the tenant or agricultural lessee; and the harvest is shared between landowner and tenant or agricultural lessee—then said that the elements of consent and sharing of harvests were not proven in this case.[19]

Specifically, the *ponencia* said that the affidavit of the original agricultural lessor, Antonio Pedral (Pedral), admitting that he instituted Vda. de Terre and her spouse, Delfin, as tenants in 1952 and agreed to a 70-30 sharing does not prove that tenancy existed between Vda. de Terre and J.V. Lagon.[20] The *ponencia*'s reason is that the affidavit "may be accorded probative value only during the interim period within which [Pedral] was the owner of the land"[21] and cannot account for the years subsequent to Pedral's sale of the land. In the words of the *ponencia*:

> It is a basic rule in evidence that a witness can testify only on the facts that are of his own knowledge; that is, those which are derived from his own perception. Therefore, even if the Court were to take hook, line, and sinker Pedral's declaration that he installed Leocadia and Delfin as tenants, such declaration may be accorded probative value only during the interim period within which he was the owner of the land. The logic behind is simple, i.e., Pedral ceased to have any personal knowledge as to the status and condition of the land after he had sold the same to Abis. Put differently, absence of personal knowledge rendered Pedral an incompetent witness to testify on the existence of tenancy from the moment the land was passed to Abis and his subsequent transferees.[22] (Citation omitted)

I disagree.

Section 7 of Republic Act No. 3844 is clear:

> Section 7. Tenure of Agricultural Leasehold Relation. — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to *continue working on the landholding until such leasehold relation is extinguished.* The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided. (Emphasis supplied)

Categorical is Section 10 of Republic Act No. 3844, which states that "the agricultural leasehold relation . . . *shall not be extinguished . . . by the sale. . . of the landholding.* In case the agricultural lessor sells . . . the

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19 *Ponencia*, p. 10.
20 Id. at 9.
21 Id.
22 Id.

landholding, the purchaser . . . shall be subrogated to the rights and substituted to the obligations of the agricultural lessor."

The affidavit of the original landowner, Pedral, states that he instituted the Spouses Terre as tenants in 1952 with a 70-30 sharing of the harvests.[23] I agree with the Department of Agrarian Reform Adjudication Board that this statement proves that a tenancy relation between Pedral and the Spouses Terre was established in 1952. The findings of the Department of Agrarian Reform Adjudication Board on the existence of tenancy relations, especially if affirmed by the Court of Appeals as in this case, should be accorded great respect and should not be disturbed.[24]

The *ponencia* implies that the consent to the tenancy relation should come from the subsequent transferee, J.V. Lagon. This interpretation is contrary to Section 10 of Republic Act No. 3844. The subrogation by the transferee of the obligations of the agricultural lessor is not by his or her consent but by *operation of law.*

It is wrong to state that Pedral's declaration "may be accorded probative value only during the interim period within which he was the owner of the land."[25] With the establishment of a share tenancy relation in 1952, which share tenancy was converted to an agricultural leasehold pursuant to Republic Act No. 6389, the agricultural leasehold relation continued despite the subsequent transfers of ownership over the landholding. To reiterate: the sale of the landholding does not extinguish the agricultural leasehold relation. The thrice-removed transfers of the landholding from Pedral down to J.V. Lagon did not extinguish the agricultural leasehold relation. This is the essence of security of tenure over a landholding. Tenancy is a real right, and the tenant's right to the possession of the landholding continues until he or she is ejected pursuant to a final and executory judgment of the court.

With Vda. de Terre having presented substantial evidence that tenancy was established in 1952, the burden of evidence shifted to J.V. Lagon to prove that the tenancy, converted to agricultural leasehold, was extinguished under any of the causes provided by law.

Unfortunately for J.V. Lagon, it miserably failed to discharge this burden.

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[23] Id. at 11.

[24] *See Ludo v. Luym Development Corporation v. Barreto,* 508 Phil. 385, 396 (2005) [Per J. Chico-Nazario, Second Division].

[25] *Ponencia*, p. 9.

Presented as evidence was a certified photocopy of the Urban Land Use Plan from the Office of the City Planning and Development Coordinator to prove that the landholding is now *classified* as commercial.[26] However, as explained in *Ludo & Luym Development Corporation v. Barreto*,[27] reclassification and conversion are different. With reclassification, the land remains agricultural but is "utilized for non-agricultural uses such as residential, industrial or commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion."[28] On the other hand, with conversion, the current use of the agricultural land is changed into some other use as approved by the Department of Agrarian Reform.[29] Thus, "a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants."[30]

Here, there is no evidence that the current use of the landholding for purposes other than agricultural was approved by the Department of Agrarian Reform. Even assuming that the landholding was legally converted, Section 36(1) of Republic Act No. 3844, as amended, requires that the tenants be ejected by a final and executory order of the court before the agricultural leasehold is considered extinguished. The agricultural leasehold relation, therefore, subsists.

To prevent Vda. de Terre from redeeming the landholding, J.V. Lagon contended that her cause of action had already prescribed. The defense of prescription, however, is untenable because under Section 12, "the right of the redemption . . . may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale." No written notice was ever furnished to Vda. de Terre; hence, the 180-day prescriptive period has not even commenced to run. The actual knowledge of the sale in 1988 cannot serve as notice from which the prescriptive period shall commence to run for the simple reason that it is not in *written* form as the law requires.

As for the payment of disturbance compensation, Vda. de Terre allegedly learned of J.V. Lagon's non-agricultural use of the landholding in 1989.[31] She filed her complaint before the Barangay Agrarian Reform Committee in 1991, two (2) years after she was effectively ejected from the landholding.[32] Submission for mediation at the barangay level as required under the 1989 Department of Agrarian Reform Adjudication Board

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26 *Ponencia*, p. 4.
27 508 Phil. 385 (2005) [Per J. Chico-Nazario, Second Division].
28 Id. at 401.
29 Id.
30 Id.
31 *Ponencia*, p. 4.
32 Id.

(DARAB) Revised Rules of Procedure was a condition precedent that had to be complied with before the filing of a complaint before the DARAB.[33] The filing of the complaint before the Barangay Agrarian Reform Committee, therefore, tolled the running of the three (3)-year prescriptive period under Section 38 of Republic Act No. 3844.[34] The complaint for payment of disturbance compensation was not barred by the statute of limitations.[35]

In sum, Vda. de Terre more than substantially proved her status as *de jure* tenant of the landholding sold to J.V. Lagon. She enjoyed security of tenure beginning in 1952, and there being no showing that the agricultural leasehold relation was extinguished under any of the causes provided by law, the agricultural leasehold relation subsists, even after the successive transfers of the property. Vda. de Terre's death is not even an impediment because her death bound her legal heirs who have succeeded her as agricultural lessee with concomitant right to redeem the landholding or to be paid disturbance compensation had the land been legally converted for commercial use.[36]

ACCORDINGLY, I vote to **DENY** the Petition for Review on Certiorari and **AFFIRM** the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 05331-MIN.

MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPUAN
Division Clerk of Court
Third Division
JUL 24 2018

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33 1989 DARAB RULES OF PROCEDURE, Rule III, secs. 1 and 3.

34 Rep. Act No. 3844, sec. 38 provides:
Section 38. *Statute of Limitations.* — An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

35 *Cf. Landicho v. Sia*, 596 Phil. 658, 682 (2009) [Per C.J. Puno, Second Division].

36 Rep. Act No. 3844, sec. 9 provides:
Section 9. *Agricultural Leasehold Relation Not Extinguished by Death or Incapacity of the Parties.* — In case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by the agricultural lessor within one month from such death or permanent incapacity, from among the following: (a) the surviving spouse; (b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age: *Provided*, That in case the death or permanent incapacity of the agricultural lessee occurs during the agricultural year, such choice shall be exercised at the end of that agricultural year: *Provided, further*, That in the event the agricultural lessor fails to exercise his choice within the periods herein provided, the priority shall be in accordance with the order herein established.
In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind his legal heirs.