CHANROBLES PUBLISHING COMPANY

SUPREME COURT
EN BANC

GRACIANO BERNAS,
***Petitioner*,**

-versus-

G.R. No. 85041
August 5, 1993

THE HONORABLE COURT OF APPEALS and NATIVIDAD BITO-ON DEITA,
***Respondents*.**
x----------x

SEPARATE OPINION:

***BELLOSILLO, J., dissenting.*:**

D E C I S I O N

PADILLA, *J.*:

Petitioner Graciano Bernas is before this Court assailing the Decision[**] of the respondent appellate court dated 19 August 1988 in CA-G.R. SP No. 14359 (CAR), which reversed the Decision[***] of the Regional Trial Court of Roxas City, Branch 18, in Civil Case No. V-5146 entitled "Natividad Bito-on Deita, et al. vs. Graciano Bernas." As

disclosed by the records and the evidence of both parties, the facts involved in the controversy are as follows:

Natividad Bito-on Deita is the owner of Lots Nos. 794, 801, 840 and 848 of the Cadastral Survey of Panay, Capiz, with a total area of 5,831 square meters. Out of liberality, Natividad entrusted the lots by way of "dugo" to her brother, Benigno Bito-on, so that he could use the fruits thereof to defray the cost of financing his children's schooling in Manila. Prior to April 1978, these agricultural lots had been leased by one Anselmo Billones but following the latter's death and consequent termination of the lease, petitioner Graciano Bernas took over and worked on the land. Benigno and Bernas worked out a production-sharing arrangement whereby the first provided for all the expenses and the second worked the land, and after harvest, the two (2) deducted said expenses and divided the balance of the harvest between the two of them. The owner, Natividad, played no part in this arrangement as she was not privy to the same.

In 1985, the lots were returned by Benigno to his sister Natividad, as all his children had by then finished their schooling. When Natividad and her husband sought to take over possession of the lots, Bernas refused to relinquish, claiming that he was an agricultural leasehold lessee instituted on the land by Benigno and, as such, he is entitled to security of tenure under the law.

Faced with this opposition from Bernas, Natividad filed an action with the Regional Trial Court for Recovery of Possession, Ownership and Injunction with Damages. After trial, the court a quo held in favor of the defendant (Bernas) and dismissed the complaint, ruling that from the record and the evidence presented, notably the testimony of the plaintiff's own brother Benigno, Bernas was indeed a leasehold tenant under the provisions of Republic Act No. 1199 and an agricultural leasehold lessee under Republic Act No. 3844, having been so instituted by the usufructuary of the land (Benigno). As such, according to the trial court, his tenurial rights cannot be disturbed save for causes provided by law.

Aggrieved, the plaintiff (Natividad) appealed to the Court of Appeals, contending that the "dugo" arrangement between her and her brother Benigno was not in the nature of a usufruct (as held by the court a

quo), but actually a contract of commodatum. This being the case, Benigno, the bailee in the commodatum, could neither lend nor lease the properties loaned, to a third person, as such relationship (of bailor-bailee) is one of personal character. This time, her contentions were sustained, with the respondent appellate court reversing the trial court's decision, ruling that having only derived his rights from the usufructuary/bailee, Bernas had no better right to the property than the latter who admittedly was entrusted with the property only for a limited period. Further, according to the appellate court, there being no privity of contract between Natividad and Bernas, the former cannot be expected to be bound by or to honor the relationship or tie between Benigno and the latter (Bernas).

Hence, this petition by Bernas.

The issue for resolution by the Court is concisely stated by the respondent appellate court as follows whether the agricultural leasehold established by Benigno Bito-on in favor of Graciano Bernas is binding upon the owner of the land, Natividad Bito-on, who disclaims any knowledge of, or participation in the same.

In ruling for the private respondent (Natividad), the respondent appellate court held that:

> "Indeed, no evidence has been adduced to clarify the nature of the 'dugo' transaction between plaintiff and her brother Benigno Bito-on. What seems apparent is that Benigno Bito-on was gratuitously allowed to utilize the land to help him in financing the schooling of his children. Whether the transaction is one of usufruct, which right may be leased or alienated, or one of commodatum, which is purely personal in character, the beneficiary has the obligation to return the property upon the expiration of the period stipulated, or accomplishment of the purpose for which it was constituted (Art. 612, Art. 1946, Civil Code). Accordingly, it is believed that one who derives his right from the usufructuary/bailee, cannot refuse to return the property upon the expiration of the contract. In this case, Benigno Bito-on returned the property lent to him on May 13, 1985 to the owners, the plaintiff herein. We do not see how the defendant can have a better right to the property than Benigno

> Bito-on, who admittedly possessed the land for a limited period. There is no privity of contract between the owner of the land and the cultivator."[1]

At this point, it is appropriate to point out that, contrary to the appreciation of the respondent appellate court, the general law on property and contracts, embodied in the Civil Code of the Philippines, finds no principal application in the present conflict. Generalibus specialia derogant. The environmental facts of the case at bar indicate that this is not a mere case of recovery of ownership or possession of property. Had this been so, then the Court would have peremptorily dismissed the present petition. The fact, however, that cultivated agricultural land is involved suffices for the Court to pause and review the legislation directly relevant and applicable at the time this controversy arose.

In this regard, it would appear that Republic Act No. 1199, invoked by the trial court, had already been rendered inoperative by the passage of Republic Act No. 3844, as amended, otherwise known as the Agricultural Land Reform Code (Code, for brevity). The former, also known as the Agricultural Tenancy Act of the Philippines and approved in August 1954 had sought to establish a system of agricultural tenancy relations between the tenant and the landholder, defining two (2) systems of agricultural tenancy: the share and the leasehold tenancy. At this point, however, further discussion of the foregoing would appear futile, for the Code, enacted in August 1963, had expressly declared agricultural share tenancy to be contrary to public policy and abolished the same. As for leasehold tenancy relations entered into prior to the effectivity of the Code, the rights and obligations arising therefrom were deemed to continue to exist until modified by the parties thereto in accordance with the provisions of the Code.[2] Thus, for all intents and purposes, Republic Act No. 3844 is the governing statute in the petition at bar. The pertinent provisions thereof state as follows:

> "Sec. 5. Establishment of Agricultural Leasehold Relations. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly.

"Sec. 6. Parties to Agricultural Leasehold Relations. — The agricultural leasehold relation shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same. (Emphasis supplied).

"Sec. 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 relationship 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).

"Sec. 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.

x x x

"Sec. 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."

x x x

Sec. 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 agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: Provided, further, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossession;[3]

(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 if caused by fortuitous of 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 nonpayment 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 year, 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.

"Sec. 37. Burden of Proof. — 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."

There is no dispute, as it is admitted by the parties in this case, that Benigno Bito-on was granted possession of the property in question by reason of the liberality of his sister, Natividad (the private respondent). In short, he (Benigno) was the LEGAL POSSESSOR of the property and, as such, he had the authority and capacity to enter into an agricultural leasehold relation with Bernas. Consequently, there is no need to dwell on the contentions of the private respondent that her brother Benigno was not a usufructuary of the property but actually a bailee in commodatum. Whatever was the true nature of his

designation, he (Benigno) was the LEGAL POSSESSOR of the property and the law expressly grants him, as legal possessor, authority and capacity to institute an agricultural leasehold lessee on the property he legally possessed.

In turn, having been instituted by Benigno as an agricultural leasehold lessee, Bernas is vested by law with the rights accruing thereto, including the right to continue working the landholding until such lease is legally extinguished, and the right to be protected in his tenure i.e., not to be ejected from the land, save for the causes provided by law, and as appropriately determined by the courts. In this connection, there is no clear indication in the record that the circumstances or conditions envisioned in Section 36 of Republic Act No. 3844, as amended, for termination of the agricultural lease relation, have supervened, and therefore Bernas' right to the possession of the property remains indisputable. This conclusion is buttressed by Sec. 37 of the Code which provides that:

> "Sec. 37. Burden of Proof . — 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."

As to any suggestion that the agricultural lease of Bernas may have terminated because the landowner (Natividad) has decided to cultivate the land herself, we submit that this Court is not in a position to settle this issue in this case, not only because of insufficient evidence to determine whether or not the grounds provided by law for termination of the agricultural leasehold relation are present but, more importantly, because the issue of termination of the agricultural leasehold relationship by reason of the landowner's alleged decision to till the land herself, was not squarely raised nor adequately litigated in the trial court.[4] It will be noted that while Natividad in her complaint with the court a quo alleged, among others, that "on 20 May 1985, the plaintiffs spouses were already in the process of taking over the land by employing a tractor operator to commence plowing the land," this allegation was denied by Bernas in his answer. But the main thrust of Natividad's complaint was that she had no privity with Bernas and that the latter should vacate the land because Benigno (from whom Bernas had received his right to possess) had himself ceased to have any rights to the land. Faced with

these allegations, the court a quo in its pre-trial order dated 9 September 1985 formulated the issues in this case, without objection from the parties, as follows:

"ISSUES

1. Is defendant an agricultural leasehold lessee of the parcels of land described in the Complaint?

2. Whether the parties are entitled to damages claims by them in their respective pleadings."

In short, the parties went to trial on the merits on the basis of the foregoing issues. Private respondent did not object to the above issues as formulated; neither can it be plausibly contended now that the first issue (i.e. whether Bernas is an agricultural leasehold lessee) embraces the issue of whether Natividad has validly terminated the agricultural leasehold because of a decision to cultivate the land herself, since under sec. 36(1) of the Code (before its amendment by Section 7 of Rep. Act No. 6389), the land-owner right to take over possession of his land for personal cultivation ASSUMES that it is under a valid and subsisting agricultural leasehold and he must obtain an order from the court to dispossess the agricultural leasehold lessee who otherwise is entitled to continued use and possession of the landholding. In other words, if Natividad had really intended to raise as an issue that she had validly terminated Bernas' agricultural leasehold, she or her counsel could have expressly included among the issues for determination, the question of whether or not she had complied with the requirements of the law for dispossessing the agricultural leasehold lessee because she, as landowner, had decided to personally cultivate the landholding. But she did not.

The trial court in its decision dated 20 October 1987 (later appealed to the Court of Appeals) held (consistent with the formulated issues in the case) that —

"x x x

As to issues, parties presented only two (2) issues and which are:

1. Whether or not defendant is an agricultural leasehold lessee of the parcels of land described in the complaint;

2. Whether the parties are entitled to damages claimed by them in their respective pleadings."

(Pre-Trial Order dated September 9, 1985, p. 41 records)

and finally disposed as follows:

> "From the above discussions, this Court opines that defendant was a share tenant on the parcels of land subject of the complaint, and an agricultural leasehold lessee under the provisions of the Agricultural Land Reform Code as amended by Presidential Decrees on the matter.
>
> No damages as damages were proved or established by evidence by the defendant.
>
> WHEREFORE, and in view of the above considerations, a decision is rendered dismissing plaintiffs complaint, and declaring defendant as the agricultural leasehold lessee on Lot Nos. 794, 801, 840 and 848 of the Cadastral Survey of Panay, Capiz, with an area of 5,831 square meters, situated at Calitan, Panay, Capiz, with security of tenure as an Agricultural Leasehold Lessee thereof; and for plaintiffs to pay the costs of the suit."

In the Court of Appeals, the litigated issue was —

"x x x

The legal issue that presents itself is whether the agricultural leasehold established by Benigno Bito-on was binding upon the owner of the land, plaintiff Natividad Bito-on, who disclaims knowledge of any arrangement with defendant Bernas. The

> lower court held that the 'dugo' arrangement was in the nature of usufruct, and that the act of the usufructuary as legal possessor was sufficient to establish tenancy relations.
>
> x x x."[5]

The long settled rule in this jurisdiction is that a party is not allowed to change his theory of the case of his cause of action on appeal.[6] We have previously held that "courts of justice have no jurisdiction or power to decide a question not in issue"[7] and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid.[8] The rule is based on the fundamental tenets of fair play and, in the present case, the Court is properly compelled not to go beyond the issue litigated in the court a quo and in the Court of Appeals of whether or not the petitioner, Graciano Bernas, is an agricultural leasehold lessee by virtue of his installation as such by Benigno Bito-on, the legal possessor of the landholding at the time Bernas was so installed and, consequently entitled to security of tenure on the land. Should grounds for the dispossession of Bernas, as an agricultural leasehold lessee, subsequently arise, then and only then can the private respondent (land owner) initiate a separate action to dispossess the lessee, and in that separate action, she must allege and prove compliance with Sec. 36(1) of the Code which consist of, among others, a one year advance notice to the agricultural leasehold lessee (the land involved being less than 5 hectares) and readiness to pay him the damages required also by the Code.

The issue of whether or not Bernas planted crops or used the land in a manner contrary to what was agreed upon between Natividad and Benigno, and thereby constituting a ground for terminating the leasehold relationship under Sec. 36, par. 3 of Rep. Act No. 3844 likewise cannot be passed upon by this Court since the issue was never raised before the courts below. Furthermore, there is no showing that Natividad, and Benigno agreed that only certain types of crops could be planted on the land. What is clear is, that the "dugo" arrangement was made so that Benigno could use the produce of the land to provide for the schooling of his children. The alleged conversion by Bernas of the land to riceland was made necessary for

the land to produce more and thus meet the needs of Benigno. It was consistent with the purpose of making the land more productive that Benigno installed an agricultural lessee. It may be recalled that when Natividad called on Benigno to testify as a witness, he stated that the produce of the land was given to him by Bernas to defray the expenses of his children (p. 3, trial court decision). The inevitable conclusion is therefore not that there was use of the land different from the purpose for which it was allegedly intended by Natividad and Benigno but rather that the installation of the agricultural lessee was made necessary so that the land could produce more to better serve the needs of the beneficiary (Benigno).

Additionally it can be stated that the agricultural leasehold relationship in this case was created between Benigno as agricultural lessor-legal possessor, on the one hand, and Bernas as agricultural leasehold lessee, on the other. The agricultural leasehold relationship was not between Natividad and Bernas. As Sec. 6 of the Code states:

> "Sec. 6. Parties to Agricultural Leasehold Relations. — The agricultural leasehold relations shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same." (Emphasis supplied).

There was, as admitted by all, no privity or tie between Natividad and Bernas. Therefore, even if Bernas had improperly used the lots as ricelands, it was Benigno who could have objected thereto since it was his (the legal possessor's) landholding that was being "improperly" used. But he (Benigno) did not. It is not for Natividad (as landowner) to now complain that Bernas used the land "for a purpose other than what had been previously agreed upon." Bernas had no agreement with her as to the purpose for which the land was to be used. That they were converted into ricelands (also for agricultural production) can only mean that the same (conversion) as approved by Benigno (the undisputed agricultural lessor-legal possessor). It is thus clear that sec. 36, par 3 of the Code cannot be used to eject Bernas.

The Court must, in our view, keep in mind the policy of the State embodied in the fundamental law and in several special statutes, of promoting economic and social stability in the countryside by vesting

the actual tillers and cultivators of the soil, with rights to the continued use and enjoyment of their landholdings until they are validly dispossessed in accordance with law. At this stage in the country's land reform program, the agricultural lessee's right to security of tenure must be "firmed-up" and not negated by inferences from facts not clearly established in the record nor litigated in the courts below. Hand in hand with diffusion of ownership over agricultural lands, it is sound public policy to encourage and endorse a diffusion of agricultural land use in favor of the actual tillers and cultivators of the soil. It is one effective way in the development of a strong and independent middle-class in society.

In confirmation we believe of the foregoing views, Section 36 of Rep. Act No. 3844 (the Code) was expressly amended by Section 7 of Rep. Act No. 6389 which replaced paragraph 1, Section 36 of the Code providing for personal cultivation by the landowner as a ground for ejectment or dispossession of the agricultural leasehold lessee with the following provision:

> Sec. 7. Section 36 (1) of the same Code is hereby amended to read as follows:
>
> (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 harvest of his landholding during the last five preceding calendar years;"

While it is true that in the case of Ancheta vs. Court of Appeals, 200 SCRA 407, the Court stated that:

> "It is well settled that RA 6389, which removed personal cultivation as a ground for ejectment of tenant/lessee, cannot be given retroactive effect in the absence of statutory provision for retroactivity or a clear implication of the law to that effect."

however, Rep. Act No. 6389 was approved on 10 September 1971.[9] The complaint in this case was filed on 21 June 1985 or long after the approval of Rep. Act No. 6389. By reason of the provision therein eliminating personal cultivation by the landowner as a ground for ejectment or dispossession of the agricultural leasehold lessee, any issue of whether or not the Court of Appeals decision should nonetheless be affirmed because the landowner had shown her intention or decided to personally cultivate the land (assuming without admitting that the issue was properly raised before the trial court), had in fact become moot and academic (even before it was hypothetically raised). The issue had been resolved by legislation unmistakably against the landowner.

It may of course be argued that "she (Natividad) did not authorize her brother (Benigno) to install a tenant thereon." (TSN, 13 February 1986, p. 6).

Even if there was a lack of authorization (from Natividad) for Benigno to install a tenant, it still follows, in our view, that Benigno as legal possessor of the landholding, could install an agricultural lessee on the landholding. For, as defined in Section 166 (3) of the Code, an agricultural lessor is a natural or juridical person who, either as owner, civil law lessee, usufructuary or legal possessor lets or grants to another the cultivation and use of his land for a price certain. Nothing in said section, it will be noted, requires that the civil law lessee, usufructuary or legal possessor should have the prior authorization of the landowner in order to let or grant to another the cultivation or use of the landholding.

Another question comes up: did Natividad expressly prohibit Benigno from installing a tenant on the land? Nothing in the evidence shows that Benigno was expressly prohibited by Natividad from installing a tenant on the landholding. And even if there was an express prohibition on the part of Natividad (landowner) for Benigno not to install an agricultural leasehold lessee, it is to be noted that any such arrangement (prohibition) was solely between Natividad and Benigno. There is no evidence to show that Bernas was aware or informed of any such arrangement between Natividad and Benigno. Neither was such arrangement (prohibition), if any, recorded in the registry of deeds to serve as notice to third persons (as Bernas) and to

the whole world for that matter. Consequently, if there was indeed such a prohibition (which is not borne out by the records) imposed by Natividad on Benigno, a violation thereof may give rise to a cause of action for Natividad against Benigno but Bernas is no less an agricultural leasehold lessee, for the law (Section 166 (2) of the Code) defines an agricultural lessee as a person who by himself and with the help available from within his immediate farm household cultivates the land belonging to or possessed by another (in this case Benigno) with the latter's consent for purposes of production for a price certain in money or in produce or both.

Ponce vs. Guevarra, L-19629 and L-19672-92, 31 March 1954 (10 SCRA 649) provides dramatic support to the security of tenure of Bernas in the case at bar. In the Ponce case, the owner (Ponce) had leased his agricultural land to Donato (the lessee) for a stipulated period with a provision in the lease contract prohibiting Donato from sub-leasing the land without the written consent of the owner (Ponce). Notwithstanding this "express prohibition", Donato sub-leased the land without the consent of Ponce (the owner). When the lease contract expired, Donato returned the land to Ponce but the sub-lessees (tenants) refused to vacate, claiming security of tenure under the tenancy laws then enforced. One of the contentions of Ponce (the owner) in seeking to dispossess the sub-lessees (tenants) was that these tenants entered into possession of the land under a violation of the lease contract by Donato (the lessee).

Over-ruling the above contention, this Court held:

> "It is true that the subleasing of said land to respondents herein (tenants) without the written consent of the petitioner (owner), constituted a violation of the original contract of lease. The breach of contract was committed, however, by Donato (the lessee)."

Of course, in the same Ponce case, the Court observed that Ponce renewed his lease contract for another year with Donato knowing at the time of such renewal that the land had been sub-leased to the tenants, thereby injecting the principle of estoppel against Ponce *vis-a-vis* the tenants. But, as we view it, the ratio decidendi in the Court's decision is to the effect that the sub-lessees (tenants) were entitled to

security of tenure on the land they were cultivating, notwithstanding the undisputed fact that they became sub-lessees (tenants) of the land as a result of a violation by the lessee (Donato) of an express provision in the lease contract prohibiting him from sub-leasing the land.

What more in the case of Bernas whose right to security of tenure as an agricultural leasehold, lessee is conferred and protected categorically, positively and clearly by the provisions of the Code (Republic Act. 3844)?

It is of course possible to construe Sec. 6 of the Code which provides:

> "Sec. 6. Parties to Agricultural Leasehold Relations. — The agricultural leasehold relation shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same. (Emphasis supplied).

in the following manner:

> "it assumes that there is already an existing agricultural leasehold relation, i.e. a tenant or agricultural lessee already works the land. As may be gleaned from the epigraph of Sec. 6, it merely states who are "Parties to Agricultural Leasehold Relations," which means that there is already a leasehold tenant on the land. But this is precisely what We are still asked to determine in these proceedings." (dissenting opinion, p. 11).

It would appear from the above interpretation of Sec. 6 of the Code that in the absence of a judicial determination or declaration of an agricultural leasehold relation, such relation does not or cannot even exist. We view this posture as incorrect for an agricultural leasehold relationship exists by operation of law when there is a concurrence of an agricultural lessor and an agricultural lessee. As clearly stated in Section 5 of the Code:

> "Sec. 5. Establishment of Agricultural Leasehold Relations. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code

> and, in other cases, either orally or in writing, expressly or impliedly."

In other words, in the case at bar, from the moment Benigno, as legal possessor (and, therefore, an agricultural lessor) granted the cultivation and use of the landholding to Bernas in exchange or consideration for a sharing in the harvest, an agricultural leasehold relationship emerged between them "by operation of law".

The fact that the transfer from Natividad to Benigno was gratuitous, we believe, is of no consequence as far as the nature and status of Benigno's possession of the landholding is concerned. He became the legal possessor thereof from the viewpoint of the Code. And as legal possessor, he had the right and authority, also under the Code, to install or institute an agricultural leasehold lessee on his landholding, which was exactly what he did, i.e. install Bernas as an agricultural leasehold lessee.

The argument that Benigno's (and consequently, Bernas') possession was meant to last for a limited period only, may appeal to logic, but it finds no support in the Code which has its own underlying public policy to promote. For Section 7 of the Code provides:

> "Sec. 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 relationship 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).

while Section 10 of the Code provides:

> Sec. 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." (Emphasis supplied).

and Section 36 of the Code provides:

> "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." (Emphasis supplied).

Clearly, the return of legal possession from Benigno to Natividad cannot prejudice the rights of Bernas as an agricultural leasehold lessee. The grounds for ejectment of an agricultural leasehold lessee are provided for by law. The enumeration is exclusive and no other grounds can justify termination of the lease. The policy and letter of the law are clear on this point. The relatively small area of the agricultural landholding involved (a little over half a hectare) would appear, in our view, to be of no consequence in this case. Here, the issue is not how much area may be retained in ownership by the land owner Natividad but the issue is whether Bernas is a duly constituted agricultural leasehold lessee of the agricultural landholding (regardless of its area) and entitled to security of tenure therein. And, as abundantly shown, the Code is definitely and clearly on his side of this issue.

It should be pointed out that the report and recommendation of the investigating officer of the Ministry of Agrarian Reform (MAR) finding that Bernas is not an agricultural leasehold lessee should deserve little consideration. It should be stressed, in this connection, that said report and recommendation is congenitally defective because —

a. it was based solely on the evidence presented by Natividad, Bernas did not participate in said investigation.

b. the findings in the report are not supported by law or jurisprudence but are merely the opinion and conclusions of

the investigator whose knowledge of the Code and the case law appears to be sadly inadequate.

c. whether or not an agricultural leasehold relation exists in any case is basically a question of law and cannot be left to the determination or opinion of a MAR-investigator on the basis of one-sided evidence.

This Court has ruled in Qua vs. Court of Appeals, 198 SCRA 236 that —

> "as regards relations between litigants in land cases, the findings and conclusions of the Secretary of Agrarian Reform, being preliminary in nature, are not in any way binding on the trial courts which must endeavor to arrive at their own independent conclusions."

The ruling finds support in the case of Graza vs. CA (163 SCRA 39), citing Section 12 of PD No. 946 expressly stating that "The preliminary determination of the relationship between the contending parties by the Secretary of Agrarian Reform or his authorized representative, is not binding upon the court, judge or hearing officer to whom the case is certified as a proper case for trial. Said court, judge or hearing officer, after hearing, may confirm, reverse or modify said preliminary determination as the evidence and substantial merits of the case may warrant." The court a quo in the case at bar tried the case on the merits, receiving the evidence of both parties and arrived at a conclusion different from that of the MAR investigator. It is to be noted that even the Court of Appeals (which decided for Natividad) found no use for the MAR investigator's report and recommendation, for obvious reasons. It is clear that the question of the existence of an agricultural leasehold relationship is a question of law which is properly within the province of the courts.

The certification of the President of the Agrarian Reform Beneficiaries Association, Panay chapter "issued upon the request of Mrs. Deita" (meaning Natividad) that Bernas is not in the masterlist of tenants, should likewise be disregarded. Since when, it may be noted, was the legal question of agricultural leasehold relationship made to depend on a certification of such an association's president?

The argument that Bernas is not a lawful tenant of Natividad based on the doctrine in the case of Lastimoza vs. Blanco (1 SCRA 231) is also not correct. The cited case does not support the desired conclusion. In the Lastimoza case, a certain Nestor Panada had an oral contract of tenancy with a certain Perfecto Gallego who was then in possession of the parcel of land. The latter however was ejected after the Court of First Instance ruled in a land registration proceeding that it was Lastimoza who was the true owner of the land. The Court in effect ruled that Gallego was an unlawful possessor and thus Panada cannot be a lawful tenant. The factual background of the Lastimoza case and the present Bernas case are totally different; the first case cannot be applied to the second. When Bernas was instituted by Benigno as an agricultural lessee, Benigno was a legal possessor of the landholding in question. No one can dispute this.

The dissenting opinion states that "it is not correct to say that every legal possessor, be he a usufructuary, or a bailee, is authorized as a matter of right to employ a tenant. His possession can be limited by agreement of the parties or by operation of law." (p. 13) Even assuming arguendo that this is a correct legal statement, there is absolutely no showing that the possession of Benigno was limited by his agreement with Natividad (as to prohibit him from instituting a tenant) or by operation of law; and because there is a total failure to disprove and even dispute that Benigno was a legal possessor at the time Bernas was installed by him as an agricultural lessee, then Bernas validly became an agricultural leasehold lessee of the land and is thus protected by the law from ejectment except for causes specified therein.

Finally, in relation to the dissenting opinion, it may be wise to repeat the statement of the Court in Jose D. Lina, Jr. vs. Isidro Carino (G.R. No. 100127, 23 April 1993) thus —

> "The Court believes that petitioner's argument — cogent though it may be as a social and economic comment — is most appropriately addressed, not to a court which must take the law as it is actually written, but rather to the legislative authority which can, if it wishes, change the language and content of the law." (Emphasis supplied).

In the case at bar, the language, policy and intent of the law are clear; this Court cannot interpose its own views as to alter them. That would be judicial legislation.

WHEREFORE, the petition is **GRANTED**. The decision of the respondent appellate court is **REVERSED** and **SET ASIDE** and that of the Regional Trial Court **REINSTATED**. Costs against the private respondent.

SO ORDERED.

Cruz, Bidin, Griño-Aquino, Regalado, Romero, Nocon, and Quiason, *JJ.*, concur.

Puno and Vitug, *J.*, took no part.

[**] Penned by Mme. Justice Minerva P. Gonzaga-Reyes and concurred in by Justices Serafin E. Camilon and Pedro A. Ramirez.
[***] Penned by Judge Jonas A. Abellar.
[1] Rollo, p. 22.
[2] Section 4, Republic Act No. 3844.
[3] This paragraph of Section 36, Republic Act No. 3844 has been expressly amended by Section 7, Republic Act No. 6389, to be discussed later.
[4] Pre-Trial Order, 9 September 1985, p. 2; Original Records, p. 41; Trial Court Decision, 20 October 1987, pp. 2-3.
[5] Rollo, p. 22.
[6] Northern Motors, Inc. vs. Prince Line, et al., G.R. No. L-13884, 29 February 1960, 107 Phil. 253.
[7] Viajar vs. Court of Appeals, G.R. No. 77294, 12 December 1988, 168 SCRA 405, 411.
[8] Viajar vs. Court of Appeals, supra, citing Salvante vs. Cruz, G.R. No. L-2531, 28 February 1951, 88 Phil. 236.
[9] Published in the Official Gazette on 31 January 1972.

SEPARATE OPINION

BELLOSILLO, J., dissenting:

This may be a faint echo in the wilderness but it is the quaint voice of a woman yearning for justice from this court of last resort. The majority opinion would leave her alone where she is, to wallow in her own misery, and despite her long and winding travails — all for the love of a brother in need — there is no light at the end of the tunnel. There is no relief in sight for her plight. Her only fault was to lend her four (4) small parcels of land to her brother so that the latter could use the fruits thereof for the education of his children in Manila. Now, she cannot get them back because her brother allowed his brother-in-law, who now claims security of tenure as tenant, to work the lands.

Worse, the brother-in-law continues to cultivate the landholdings, even converting the orchards into ricelands as though they were his own and constructing a house of strong materials thereon, without paying any rent!

Before seeking judicial relief, private respondent went to the Ministry of Agrarian Reform (MAR) as required by law,[1] and obtained a favorable finding that there was no tenancy relationship between her and her brother's brother-in-law. But the courts below disregarded this important piece of evidence which speaks eloquently of the merit of her cause. MAR certified that petitioner was not a tenant of private respondent, hence, the case was proper for trial.

The finding of MAR was confirmed by the Agrarian Reform Beneficiaries Association (ARBA) when its President certified after an investigation that petitioner did not appear in the Master List of tenant beneficiaries of the barangay. Even his older brother, the barangay captain, after conducting his own investigation, refused to certify that petitioner was a tenant of the holdings of private respondent.

Is private respondent indeed bereft of any remedy in law to recover possession of her landholdings — she who did not employ petitioner nor authorize anyone to employ him as tenant of her land; she who is not even paid any rent by petitioner for the use of her landholdings; she whose landholdings have been converted by petitioner from orchards to ricelands and on which he constructed a house of strong materials, both without first securing authority from her? Under the circumstances, we can only hope that posterity will not condemn us for the fate of private respondent and the many others who may be similarly situated.

My conscience prompts me to dissent from the majority opinion and to vote for the affirmance of the decision of the Court of Appeals, not necessarily on the basis of its rationale, but mainly because I do not subscribe to the view that a usufructuary or legal possessor under Sec. 6, R.A. 3844, as amended, is automatically authorized to employ a tenant without the consent of the landowner. For, the right to hire a tenant is basically a personal right of a landowner, except as may be provided by law. But, certainly, nowhere in Sec. 6 of R.A. 3844 does it say that a legal possessor of a landholding is automatically authorized to install a tenant thereon.

Natividad Bito-on Deita owns Lots 794, 801, 840 and 848 of the Cadastral Survey of Panay, Capiz. Lots 794 and 801, with areas of 943 square meters (Exh. "C") and 855 square meters (Exh. "B"), respectively, are coconut lands; Lot 840, with an area of 1,000 square meters (Exh. "D"), is planted to bananas, while Lot 848, with an area of 1,146 square meters (Exh. "A"), is riceland. Lot 840 was the owner's homelot on which stood before the family home. Although the trial court found that the total area of the four (4) lots, which are not contiguous, was 5,831 square meters, a closer examination of their tax declarations (Exhs. "A" to "D") reveals that their total productive area is only 3,844 square meters, which can be smaller than a residential lot in a plush village in Metro Manila.

After Natividad recovered these lots from a former tenant in April 1978, she entrusted them to her brother, Benigno Bito-on, so that the latter may be able to support the education of his children in Manila.[2] She did not authorize her brother to install a tenant thereon.[3] After successfully retrieving a landholding from a tenant at

that time, no landowner in his right mind would give his land in tenancy again to avoid the operation of P.D. 27, then at its peak and dreaded by landowners as an unjust deprivation of property rights.

Thereafter, without the knowledge, much less consent, of Natividad, Benigno entered into some arrangement with his brother-in-law, Graciano Bernas, to work the lands. But Natividad was unaware of this arrangement as she was staying in Manila where her husband was then employed. It was not until the latter's retirement and the return of the family to Panay, Capiz, that she learned that Graciano was already working the lands, converting Lots 794, 801 and 840 into ricelands, and constructing on Lot 840 a house of concrete hollow blocks.

It bears emphasizing that the transfer of possession between Natividad and Benigno was not coupled with any consideration; rather, it was pure magnanimity on the part of Natividad on account of her "dugo" or blood relation with Benigno, which Atty. Herminio R. Pelobello, Trial Attorney II and MAR Investigating Officer, explains —

> "A 'DUGO' system is a personal grant of privilege and a privilege personally granted cannot be delegated or extended to someone else but (is) personal (in) nature. Once the 'DUGO' grantee or trustee returns the subject matter of `DUGO', the relationship is terminated . . . In this instance, Exh. 'E' is an expressive documentary evidence of return of 'DUGO' property by constructive mode of returning of possession, use and enjoyment of property; same therefore deserves credence to the exclusion of any interested person in tillage therein."

On 13 May 1985, his children having finished schooling in Manila, Benigno returned possession of the property to Natividad, in faithful compliance with their agreement. However, Graciano refused to vacate the premises claiming at first that he was installed thereon by Benigno, although after Benigno denied this allegation, petitioner changed his theory by presenting Monica Bernales Bito-on, wife of Benigno, to testify that she was the civil law lessee who installed Graciano on the lands. This, despite the crux of the evidence spread on record that it was Benigno Bito-on who was given the physical

possession of the lands by his sister Natividad, and not Monica who is only her sister-in-law. Incidentally, Monica is the sister of the wife of Graciano Bernas.

On 17 May 1985, fazed by the refusal of Graciano to vacate, Natividad filed a letter-petition[4] with the Ministry of Agrarian Reform (MAR) seeking clarification of the actual status of Graciano vis-a-vis her landholdings. Accordingly, Graciano was summoned at least three (3) times but the latter refused to attend the scheduled hearings. Consequently, Atty. Herminio R. Pelobello, who was assigned to the case, conducted his investigation and thereafter issued a resolution[5] sustaining the complaint of Natividad Bito-on Dieta and concluding, among others, that —

> "out of petitioner's benevolence, generosity and pity on his elder brother's financial hardship, she had the aforesaid lots entrusted to her brother in the nature of `DUGO' so that (the) latter then possessed the land and enjoy(ed) the . . . fruits thereon for the above purpose beginning the year 1978 up to 2nd crop of 1985; that upon the surrender or giving back in her favor of the land subject of 'DUGO' there now appears the respondent claiming to be the tenant-tiller on the land who would not relinquish the land in her favor alleging and contending to have been instituted by Monica Bernales who is his sister-in-law.
>
> x x x
>
> "It is observed in this letter-petition (that) Filipino family adhered and observed solidarity, sympathy and pity by extending financial help of (to) a close relative by consanguinity. Apparently under the circumstance, the 'DUGO' trustee for the benefit of his school children in Manila is Benigno Bito-on . . . Petitioner feeling morally bound . . . made the institution of 'DUGO' relationship among them in order to contribute a solution thereof. But ultimately after the 2nd cropping of 1985 and after the school children of Benigno Bito-on had graduated in college, he returned the property to petitioner as evidenced by Exh. 'E'.

> "Now comes to the surprise of petitioner, the respondent spring(s) out and assert(s) his alleged right to tillage so as to prevent landowner to repossess the land subject of `DUGO' upon return which is co-terminous with period thereof.
>
> "On such core, no law or jurisprudence recognizes the right of respondent. Be that as it may, as now happens, with Benigno Bito-on nor his wife Natividad (Monica) Bernas was legally authorized to institute somebody to be tenant-tiller under the circumstance of 'DUGO' . . . so as to be entitled to invoke any right or privilege under our Agrarian Laws.
>
> x x x
>
> "IN VIEW OF THE FOREGOING CONSIDERATIONS, it is now the honest opinion of the undersigned to recommend as it is hereby recommended that the petitioner, Natividad Bito-on Deita, be entitled to the possession, use and enjoyment of the lots subject of `DUGO', and further, that the respondent constructively and actually delivers to her the same lots indicated in this resolution, upon receipt of copy hereof."

The foregoing resolution of the MAR Investigating Officer may not be well crafted, but it is expressive of his finding that Graciano Bernas was not a tenant-tiller and, consequently, it recommended that "the petitioner, Natividad Bito-on Deita, be entitled to the possession, use and enjoyment of the lots subject of 'DUGO', and further, that the respondent (Graciano Bernas) constructively and actually delivers to her the same lots indicated in this resolution . . ." concluding that "no law or jurisprudence recognizes the right of respondent."

While Natividad went through the normal legal procedure to obtain relief, Graciano refused to attend the formal investigation and hearing conducted by the MAR, much less heed its recommendation. If Graciano was a law-abiding citizen and believed that the law was on his side, he should have submitted to the fact-finding investigation by an administrative agency pursuant to law.

On 24 May 1985, a mediation conference between Natividad and Graciano was held at the residence of Bgy. Captain Felipe Bernas,

older brother of Graciano, but it also proved fruitless as Graciano continued to refuse to vacate subject landholdings. To top it all, Bgy. Captain Bernas sided with Graciano and refused to issue a certification as required under P.D. 1508. If Graciano was indeed a tenant of the landholding, his older brother could have easily issued the required certification.

Consequently, the certification had to be issued by Sulpicio Bering, ARBA President, Panay Chapter,[6] dated 27 May 1985, at Barangay Calitan, Panay, Capiz, which confirmed the factual findings of the MAR Investigating Officer —

> "This is to certify that undersigned in his capacity as President of Agrarian Reform Beneficiaries Association (ARBA), Panay Chapter, had attended last May 24, 1985 the mediation confrontation among Mrs. Natividad Bito-on Dieta and Mr. Graciano Bernas accompanied by his wife Adela Bernales that took place right at the residence of Brgy. Captain Felipe Bernas. That the outcome of the conference was fruitless as the Barangay Captain was siding with his younger brother Graciano Bernas, and he (Brgy. Captain) vehemently refused to issue any certification as required under P.D. 1508.
>
> "Hence undersigned as President of ARBA Panay Chapter hereby manifest and certify that Graciano Bernas is not among those whose names are entered in our masterlist of tenants so as to suffice as a bona fide member of Agrarian Reform Beneficiaries Association in Panay, Capiz. It is further stated that Mr. Graciano Bernas is not a leasehold tenant of landowner Mrs. Natividad Bito-on Dieta in Barangay Calitan, Panay, Capiz (Italics supplied).
>
> "This certification is being issued to Mrs. Dieta in lieu of the refusal on part(s) of Brgy. Captain to issue such under the provision of P.D. 1508."

On 21 June 1985, after all her efforts to recover through administrative means failed, Natividad finally instituted an action in the Regional Trial Court of Capiz. But, in deciding the case, the trial court completely disregarded the result of the administrative

investigation conducted by Atty. Herminio R. Pelobello of the MAR (Exh. "6") and the Certification of the President of ARBA (Exh. "E") and ruled in favor of Graciano, holding that the transaction between Natividad and Benigno was in the nature of a usufruct so that the later was legally capacitated to install Graciano as an agricultural lessee whose tenurial right could not be disturbed except for causes enumerated under Sec. 35 of R.A. 3844, as amended,[7] and that Natividad failed to establish any of the causes for his termination.

Natividad elevated her cause to the Court of Appeals contending that the transaction between her and her brother Benigno was not in the nature of a usufruct but rather one of commodatum. As such, Benigno, as bailee in commodatum, could neither lend nor lease the property loaned to him to a third person since the relationship between bailor and bailee is personal in character. She also established with her evidence that Graciano converted without her authority three (3) of her parcels of land, particularly those planted to coconut and banana, to ricelands, which is a ground to terminate a tenant, assuming that Graciano was.

The contention of Natividad was sustained by the Court of Appeals, which ordered the ejectment of Graciano. The Court of Appeals ruled that having merely derived his right over the property from the bailee, Graciano could have no better right than bailee Benigno who possessed the landholdings only for a special purpose and for a limited period of time. The spring cannot rise higher than its source.

Hence, this petition for review on certiorari filed by Graciano seeking reversal of the Decision[8] of the Court of Appeals on the issue of whether he is an agricultural lessee of the landholdings entitled to security of tenure.

The resolution of this issue hinges on the proper interpretation of Sec. 6 of R.A. 3844, as amended, otherwise known as "The Agricultural Land Reform Code," which provides:

> "Sec. 6. Parties to Agricultural Leasehold Relations. — The agricultural leasehold relations shall be limited to the person who furnishes the landholding, either as owner, civil law lessee,

> usufructuary, or legal possessor, and the person who personally cultivates the same" (Italics ours).

Those who hold that Graciano is a leasehold tenant anchor their proposition on the above provision of Sec. 6 as they find Benigno a "legal possessor" of the lands and so could legally install a tenant thereon.

I strongly disagree. When Sec. 6 provides that the agricultural leasehold relations shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same, it assumes that there is an existing agricultural leasehold relation, i.e., a tenant or agricultural lessee already works the land. As may be gleaned from the epigraph of Sec. 6, it merely states who are "Parties to Agricultural Leasehold Relations," which means that there is already a leasehold tenant on the land. But this is precisely what we are still asked to determine in these proceedings.

To better understand Sec. 6, R.A. 3844, let us refer to its precursor, Sec. 8, R.A. 1199, as amended, which provides:

> "Sec. 8. Limitation of Relation. — The relation of landholder and tenant shall be limited to the person who furnishes land, either as owner, lessee, usufructuary, or legal possessor, and to the person who actually works the land himself with the aid of labor available from within his immediate farm household."

Again, Sec. 8 of R.A. 1199 assumes the existence of a tenancy relation. But, as its epigraph states, it is a "Limitation of Relation," and the purpose is merely to limit the tenancy "to the person who furnishes land, either as owner, lessee, usufructuary, or legal possessor, and to the person who actually works the land himself with the aid of labor available from within his immediate farm household." Otherwise stated, once the tenancy relation is established, the parties to that relation are limited to the persons therein stated. But, obviously, inherent in their right to install a tenant is their authority to do so; otherwise, without such authority, they cannot install a tenant on the landholding. But, definitely, neither Sec. 6 of R.A. 3844 nor Sec. 8 of

R.A. 1199 automatically authorizes the persons named therein to employ a tenant on the landholding.

According to Santos and Macalino, considered authorities on land reform, the reason for Sec. 6, R.A. 3844, and Sec. 8, R.A. 1199, in limiting the relationship to the lessee and the lessor is "to discourage absenteeism on the part of the lessor and the custom of co-tenancy" under which "the tenant (lessee) employs another to do the farm work for him, although it is he with whom the landholder (lessor) deals directly. Thus, under this custom, the one who actually works the land gets the short end of the bargain, for the nominal or `capitalist' lessee hugs for himself a major portion of the harvest."[9] "This custom has bred exploitation, discontent and confusion. The 'kasugpong,' 'kasapi,' or 'katulong' also works at the pleasure of the nominal tenant."[10] When the new law, therefore, limited tenancy relation to the landholder and the person who actually works the land himself with the aid of labor available from within his immediate farm household, it eliminated the nominal tenant or middle man from the picture.[11]

Another noted authority on land reform, Dean Jeremias U. Montemayor,[12] explains the reason for Sec. 8, R.A. 1199, the precursor of Sec. 6, R.A. 3844:

> "Since the law establishes a special relationship in tenancy with important consequences, it properly pinpoints the persons to whom said relationship shall apply. The spirit of the law is to prevent both landholder absenteeism and tenant absenteeism. Thus, it would seem that the discretionary powers and important duties of the landholder, like the choice of crop or seed, cannot be left to the will or capacity of an agent or overseer, just as the cultivation of the land cannot be entrusted by the tenant to some other people. Tenancy relationship has been held to be of a personal character" (see Secs. 37 and 44, R.A. 1199, as amended; Italics supplied).

To argue that simply because Benigno is considered a usufructuary or legal possessor, or a bailee in commodatum for that matter, he is automatically authorized to employ a tenant on the landholding is to beg the question. For, it is not correct to say that every legal

possessor, be he a usufructuary or a bailee, is authorized as a matter of right to employ a tenant. His possession can be limited by agreement of the parties or by operation of law. In the case before Us, it is obvious that the tenure of the legal possessor was understood to be only during the limited period when the children of Benigno were still schooling in Manila.

As already stated, Sec. 6 simply enumerates who are the parties to an existing contract of agricultural tenancy, which presupposes that a tenancy already exists. It does not state that those who furnish the landholding, i.e., either as owner, civil law lessee, usufructuary, or legal possessor, are automatically authorized to employ a tenant on the landholding. The reason is obvious. The legal possession may be restrictive. Even the owner himself may not be free to install a tenant, as when his ownership or possession is encumbered or is subject to a lien or condition that he should not employ a tenant thereon. This contemplates a situation where the property may be intended for some other specific purpose allowable by law, such as, its conversion into a subdivision.

In the case at bar, the transfer of possession was purely gratuitous. It was not made for any consideration except for the “dugo” or blood relationship between Natividad and Benigno. Consequently, the generation of rights arising therefrom should be strictly construed in favor of Natividad. In fact, for lack of consideration, she may take back the land at any time unless she allows a reasonable time for Benigno to harvest the produce of what he may have planted thereon as a possessor in good faith. There is not even any valid obligation on her part to keep Benigno in possession, except as herein adverted to, much less should she be deprived of such possession just because another person was employed by her brother to work the land.

Under the doctrine laid down in Lastimoza vs. Blanco,[13] Graciano cannot be a lawful tenant of Natividad for the reason that Benigno, after failing to return the landholding to Natividad, already became a deforciant, and a deforciant cannot install a lawful tenant who is entitled to security of tenure. Incidentally, Benigno and Graciano being brothers-in-law, their wives being sisters, and living in a small barangay, Graciano cannot profess ignorance of the very nature of the possession of Benigno as well as the restrictions to his possession.

It may be relevant to consider, for a better appreciation of the facts, the actual condition of the landholdings. As already adverted to, Lots 794 and 801 are coconut lands with an area of 943 square meters (Exh. "C") and 855 square meters (Exh. "B"), respectively, or a total area of 1,798 square meters. With this meager area for the two (2) coconut lands, there is indeed no reason to have them tenanted. The coconut lands need not be cultivated when the coconut trees are already fruit-bearing. Benigno only had to ensure that the fruits thereof were not stolen.

Lot 840 has an area of 1,000 square meters (Exh. "D") and is planted to bananas. Like the coconut lands, no tenant is needed to cultivate it and Benigno only has to keep watch over it against stray animals and protect his harvests. If we take away from this area of 1,000 square meters the homelot reserved for the owner, the remaining portion for production cannot be more than 800 square meters. It can be less, depending on the size of the homelot.

Before Graciano converted Lots 714, 801 and 840 into ricelands, the only riceland then was Lot 848, with an area of 1,146 square meters (Exh. "A"). This is too small for an economic family-size farm to sustain Benigno and his family even if he works it himself.

Considering the size of the landholdings, which have a total productive area of only 3,844 square meters per their tax declarations, there may not be enough produce to pay for the educational expenses of his children if Benigno did not work the land himself. Hiring a tenant would defeat the purpose for which the possession was given to him. In other words, it would be absurd for Benigno to hire another person to cultivate the land and share the produce thereof. As a matter of fact, to minimize expenses, the children of Benigno and Monica stayed with Natividad while schooling in Manila.

Since Lots 714, 801 and 840 are planted to coconut and banana trees, they are classified as lands planted to permanent crops. Consequently, in order for a person to be considered a tenant of these lands, he must have planted the crops himself before they became fruit-bearing. But, in the case before us, the coconut and banana trees

were already fruit-bearing at the time Graciano commenced to work on the lands, hence, he cannot be considered a tenant of these lands.

Consequently, the transfer of possession of the landholding from Natividad to Benigno should be strictly viewed as one for the cultivation alone of Benigno, himself a farm worker, who was not authorized by Natividad to employ a tenant. Benigno's possession was limited only to the enjoyment of the fruits thereof, subject to the will of landowner Natividad. Benigno was not empowered to install a tenant.[14]

Benigno therefore possessed the land as a mere possessor-cultivator. As such, he was required to personally till or cultivate the land and use the produce thereof to defray the cost of education of his children. Natividad, who entrusted her landholdings to Benigno, was still the agricultural owner-cultivator, who is "any person who, providing capital and management, personally cultivates his own land with the aid of his immediate family and household."[15] It must then be held that the cultivation of Benigno was also the cultivation of Natividad. Indeed, the fact that the lands were free of tenants when Natividad entrusted them to Benigno was indicative of her intention to maintain that condition of the landholdings and have them tended personally by Benigno himself.

Accordingly, neither Benigno nor Graciano can be a lessee tenant who enjoys security of tenure. Benigno could only be an encargado of his sister Natividad, merely coterminous with the schooling of Benigno's children in enjoying the produce thereof for the intended beneficiaries, his children studying in Manila.

Our attention may be invited to settled jurisprudence that the existence of an agricultural leasehold relationship is not terminated by changes of ownership in case of sale, or transfer of legal possession as in lease.[16] But, again, this assumes that a tenancy has already been established. In the instant case, no such relationship was ever created between Natividad and Graciano, the former having simply given her land to Benigno without any authority to install a tenant thereon,[17] and only for a limited duration as it was coterminous with the schooling of Benigno's children in Manila.

In a number of cases, this Court has sustained the preservation of an agricultural leasehold relationship between landholder and tenant despite the change of ownership or transfer of legal possession from one person to another. But in all these cases, the facts legally justified the preservation of such relationship. For example, in Endaya vs. Court of Appeals,[18] Salen vs. Dinglasan,[19] Catorce vs. Court of Appeals,[20] and Co vs. Court of Appeals,[21] the tenants were found to have been instituted by the previous landowners or owners in fee simple. Consequently, the change of ownership of the land did not terminate the tenancy relationship already existing. In Novesteras vs. Court of Appeals,[22] it was the present landowner himself who instituted the agricultural leasehold relation. In Ponce vs. Guevarra,[23] although the civil law lessee was barred from installing a tenant under the terms of the original contract of lease, the landowner nonetheless extended the lifetime of the lease. Finally, in Joya vs. Pareja,[24] the lessor-landowner negotiated for better terms with the tenant of the civil law lessee upon expiration of the lease.

As may be gleaned from all these seven (7) cases, the landowner himself had a hand in either installing the tenant, or confirming the tenancy relation by extending it, or negotiating directly with the tenant for better terms upon expiration of the civil lease. For, indeed, the right to install a tenant is a personal right that belongs to the landowner,[25] except perhaps in civil lease when the lessee is authorized to sublease the leased premises unless expressly prohibited by agreement of the parties.[26]

Thus, the agricultural leasehold relations were preserved in these cases because the “legal possessors” therein were clearly clothed with legal authority or capacity to install tenants. But even assuming that they were not so authorized as in the Ponce case where the civil law lessee was expressly barred from installing a tenant under their contract of lease, the subsequent actions of the landowners in extending the lifetime of the lease, or in negotiating for better terms with the tenants, placed the landowners in estoppel from contesting the agricultural leasehold relations. Consequently, the tenants in those cases may be categorized as tenants *de jure* enjoying tenurial security guaranteed by the Agricultural Tenancy Law,[27] now by the Agricultural Land Reform Code, as amended. This is not the case before us.

In an attempt to bolster his theory that he was tenant of the landholding, Graciano presented no less than the wife of Benigno, Monica Bernales Bito-on, who testified that she was the civil law lessee who installed Graciano as tenant. Interestingly, Monica is the sister of Adela Bernales, wife of Graciano. But why should Monica be the civil law lessee and not her husband Benigno who is the brother of landowner Natividad? It is highly improbable that instead of Natividad constituting her brother Benigno as the possessor of the lands, it was Monica who was entrusted with them. That is contrary to common practice and experience. Even the trial court itself found the version of Graciano incredible when it held that Benigno was the legal possessor in the concept of usufructuary. Yet, it ignored this discrepancy — which could have destroyed the credibility of Graciano — when in fact it could have totally negated or disregarded Graciano's assertion of tenancy derived from Monica as civil law lessee. The conclusion is not farfetched that Benigno and Monica were just entrusted with the four (4) lots, three (3) of which were orchards until their unauthorized conversion to ricelands by Graciano, so that the former could avail of the produce thereof for the purpose already stated.

Moreover, the claim of Graciano that he was the duly appointed tenant is belied by a certification issued by the President of the Agrarian Reform Beneficiaries Association (ARBA), Panay Chapter, stating that, as of 27 May 1985, Graciano Bernas was neither enrolled in the Master List of tenant beneficiaries nor registered as a leasehold tenant of Natividad in Barangay Calitan.[28] If he was truly a tenant, he should have been vigilant enough to protect his rights and thus have his name registered. After all, at that time, his older brother was the barangay captain of Calitan where the property is situated.

When Natividad invoked Sec. 2, P.D. 316, by referring her ejectment case to the Ministry of Agrarian Reform for preliminary determination, MAR accordingly certified that it was proper for trial, an indication that there was no tenancy relationship between the parties. Such factual finding, unless found to be baseless, binds the court because the law gives exclusive authority to MAR to determine preliminarily the issue of tenancy relationship between the

contending parties before the court may assume jurisdiction over an agrarian dispute or controversy.[29]

Indeed, the Investigating Officer of MAR correctly found that no tenancy relation existed between Natividad and Graciano.[30] Such factual finding by an administrative agency as the MAR is entitled to the greatest respect and is binding and conclusive upon this court, except when it is patently arbitrary or capricious, or is not supported by substantial evidence.[31] Regrettably, there vital informations established in the trial court were simply ignored, to the great prejudice of respondent Natividad who, under the majority opinion, will find herself helplessly without a remedy and all because she upheld the true Filipino tradition of family solidarity by providing succor to a blood brother who needed assistance for the educational advancement of his children.

It may be worth to emphasize that neither the decision of the Court of Appeals nor the discussions in this case mention the unauthorized conversion by Graciano of Lots 794, 801 and 840 into ricelands, thereby impairing the original nature and value of the lands. If for this reason alone, assuming that he was lawfully installed as tenant, Graciano's tenancy should be terminated under Sec. 36, par. (3), for planting crops or using the landholdings for a purpose other than for which they were dedicated.

While this may not have been expressly raised as an issue, it is nevertheless related or incidental to the issues presented by the parties for which evidence was adduced in the trial court by private respondent without objection from petitioner. We should not disregard the evidence if only to arrive at a fair and just conclusion.

Some may have apprehensions that should Sec. 6 of R.A. 3844 be construed as not to vest the legal possessor with automatic authority to install tenants, it would in effect open the floodgates to their ejectment on the mere pretext that the legal possessor was not so authorized by the landowner. This is more imagined than real. The landowner has the burden of proving that the legal possessor was not authorized to install tenants and, more often than not, the legal possessor is so empowered. In civil law lease, for instance, where there is consideration, the general rule is that the lessee can sublease

the leased holding unless there is an express prohibition against subletting in the contract itself.[32] Thus, in order for the lessee to be barred from subletting, the contract of lease must expressly stipulate to that effect. In this case, the transaction between brother and sister was not for any material consideration nor was it intended to defeat any purpose of law. There is not even any insinuation that Benigno was only being used by Natividad to oust Graciano from the lands.

In any event, should the majority still hold that Sec. 6 of R.A. 3844 authorizes the persons therein enumerated to institute a tenant automatically, although I strongly disagree, it should at most be made to apply only to transfers of legal possession where there is material consideration, and not where such transfers are absolutely gratuitous or purely out of benevolence because of personal or blood relationship. Unfortunately for Natividad, her benevolence does not seem to evoke reciprocal benevolence from this Court.

FOR ALL THE FOREGOING CONSIDERATIONS, I have to dissent from the majority opinion and reiterate my vote to **AFFIRM** the judgment under review.

Meanwhile, I can only hope that, in the end, the real meaning of justice in this case is attained.

Feliciano, *J.*, Davide, Jr. and Melo, *JJ.*, dissent.

BELLOSILLO, J., dissenting:

[1] P.D. 316.
[2] Tsn, 13 February 1986, p. 6.
[3] Ibid., p. 8.
[4] Exh. "F", RTC Record, p. 101.
[5] Exh. "G", RTC Records, pp. 102-104.
[6] Exh. "E", RTC Record, p. 100.
[7] Sec. 36. Possession of Landholding; Exceptions. — (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. (2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any 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 has been previously agreed upon; (4) The agricultural lessee failed to adopt proven agricultural farm practices . . . (5) The land or other substantial 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 . . . (7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section 27.

[8] Penned by Justice Minerva P. Gonzaga-Reyes, concurred in by Justices Serafin N. Camilon and Pedro A. Ramirez.

[9] Santos and Macalino, The Agricultural Land Reform Code, 1963 Ed., p. 11.

[10] Id., pp. 213-214.

[11] Id., p. 214.

[12] Montemayor, Jeremias U., Labor, Agrarian and Social Legislation, Vol. III, 1968 ed., p. 40.

[13] G.R. No. L-14697, 28 January 1961, 1 SCRA 231.

[14] Tsn, 13 February 1986, p. 8.

[15] Sec. 166, par. (22), R.A. 3844.

[16] Endaya vs. Court of Appeals, G.R. No. 88113, 23 October 1992.

[17] See Note 14.

[18] See Note 16.

[19] G.R. No. 59082, 28 June 1991, 198 SCRA 623.

[20] G.R. No. 59762, 11 May 1984, 129 SCRA 210.

[21] G.R. No. 65298, 21 June 1988, 162 SCRA 390.

[22] G.R. No. L-36654, 31 March 1967, 149 SCRA 47.

[23] G.R. Nos. L-19629 and 19672-92, 31 March 1964, 10 SCRA 649.

[24] 106 Phil. 645 (1959).

[25] Montemayor, Jeremias U., op. cit.

[26] Art. 1650, New Civil Code.

[27] Lastimoza vs. Blanco, supra.

[28] Exh. “E”, RTC Record, p. 100.

[29] Sec. 12, par. (b), subpar. (2), of P.D. 946.

[30] Exh. “G”, RTC Records, pp. 102-104.

[31] Republic vs. Sandiganbayan, G.R. No. 89425, 25 February 1992, 206 SCRA 506.

[32] Art. 1650, New Civil Code.

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