

[redacted] [redacted]
Plaintiff [redacted]
Defendant [redacted]
[redacted] [redacted]
[redacted] [redacted]
[redacted] [redacted]
[redacted] [redacted]
[redacted] [redacted]

[redacted]
[redacted]

APPROVED to resolve [redacted] and

FINDINGS OF FACT

FIRST.- By means of a complaint presented on the [redacted] of [redacted] of [redacted] in the central filing office of this court, [redacted] and [redacted] [redacted], by their own right brought an agrarian lawsuit against the ejido members' general assembly of [redacted], represented by the members of the ejido commission, demanding the following benefits:

"A.- Partial nullification of the internal regulations approved [redacted] of [redacted] of [redacted], specifically absolute nullification of Article 37, which violates our rights

"B.- Recognition by the ejido members' general assembly of the [redacted], [redacted], [redacted], [redacted] ejido, of the undersigned [redacted] [redacted], as residents of the village and of the undersigned [redacted] as ejido members.

"C.- Recognition of the senior interest in possession of the land areas described below in favor of the undersigned:
.

"At [redacted], the plot of land with the following extent and adjacencies: Northern border: 20 meters adjoining [redacted]. Southern border: 20 meters adjoining an unnamed avenue. Eastern border: 20 meters adjoining an unnamed street. Western border: 20 meters adjoining [redacted].

“At the [redacted], two lots of land with the following extent and adjacencies:

“Lot 1: Northern border: 40 meters adjoining [redacted]. Southern border: 40 meters adjoining [redacted]. Eastern border: 40 meters adjoining [redacted]. Western border: 40 meters adjoining an unnamed street.

“Lot 2: Northern border: 20 meters adjoining an unnamed street. Southern border: 20 meters adjoining [redacted]. Eastern border: 20 meters adjoining [redacted]. Western border: 20 meters adjoining [redacted].

“As well as a parcel with the following extent and adjacencies:..

“Parcel: Northern border: 120 meters adjoining [redacted]. Southern border: 120 meters adjoining [redacted]. Eastern border: 40 meters adjoining [redacted]. Western border: 40 meters adjoining the [redacted] ejido.

“D).- Accordingly, to order the National Agrarian Registry to enter the the judgment, rectify the registration entry of the Acts of Assembly dated [redacted] of [redacted] of [redacted], in order to repeal Article 37 of the ejido’s internal regulations, which are being contested by means of this lawsuit because they violate our rights, and for the undersigned to be enrolled as residents.”

[redacted] and [redacted] [redacted], attached a photocopy of the following documents to their initial complaint filing: two birth certificates identified with the numbers 263 dated [redacted] of [redacted] of [redacted] [redacted] and 362 of [redacted] of [redacted] of [redacted] of [redacted], the former corresponding to [redacted] [redacted], and the second to [redacted] [redacted], both certificates were issued by the [redacted] official of the Civil Registry of [redacted]; an inheritance certificate dated [redacted] of [redacted] of [redacted] issued by [redacted] [redacted] in favor of [redacted]; a document of [redacted] of [redacted] of [redacted], which contains a purchase and sale agreement for a plot signed by [redacted] [redacted] as seller, and [redacted] as purchaser; an inheritance certificate of [redacted] of [redacted] of [redacted] signed by [redacted] in favor of [redacted] [redacted]; an internal regulation application for inscription dated [redacted] of [redacted]

of [redacted], signed by the members of the ejido commission of the [redacted] village, [redacted] municipality [;] a ruling of the ejido members' general assembly dated [redacted] of [redacted] of [redacted] regarding approval of the new internal regulation of said population center; certification of [redacted] of [redacted] of [redacted] issued by the president of the ejido commission of said village in favor of [redacted]; a certificate of [redacted] of [redacted] of [redacted] issued by the president of the ejido commission of said population center in favor of [redacted] [redacted]; and four maps of plots of land located in the village [redacted] [redacted], [redacted] (see pages 1 to 29 of the file). . . .

.....

SECOND.- The demand for partial nullification of the internal regulations, for recognition of residence and ejido membership and senior rights to possessing four ejido parcels of land was admitted into evidence on [redacted] of [redacted] of [redacted] with the number [redacted]. In the same acceptance of admission, this court agreed to notify, serve with photocopies of the demand and its attachments, and issue a summons to the ejido members' general assembly of [redacted] village [redacted] municipality, represented by the members of the ejido commission so that they would promptly appear for a court hearing to respond and give testimony regarding the claim filed against them. Similarly, the court of this jurisdiction agreed to send an official request to the state branch office of the National Agrarian Registry, asking that it remit a certified copy of the internal regulations of [redacted] village [redacted] [redacted] and that it also report if the plaintiffs [redacted] [redacted] and [redacted] are residents or ejido members of that population center, and, if so, to indicate the agrarian, parcel, common use, or urban plot use rights certificate numbers that may have been issued to them, and finally that it report if in the above-cited village a land demarcation, allotment and assignment assembly has been held, and, if so, to remit a certified copy of said document (see pages 30 to 32 and 34 to 37 of the file). . . .

The hearings scheduled for [redacted] and [redacted] did not take place because the parties in the dispute failed to appear (see pages 33 and 38 of the file).

Later, [redacted] [redacted], [redacted] and [redacted] [redacted] submitted a motion requesting the court to set a new

date for a court hearing (see pages 40 to 44 of the file).
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In official document number [redacted] dated [redacted], the National Agrarian Registry state branch office reported: **“In fulfillment of your official request number [redacted] [redacted] of [redacted] of [redacted] received the [redacted] of the same [redacted] [redacted], we report to you that having reviewed this branch office’s files, we did not locate any antecedent history that indicated that [redacted] and [redacted] [redacted] are owners of rights in the village known as [redacted] [redacted] [redacted], such that if the interested parties have any antecedent information, they should provide this information to aid our search. Similarly, we remit to you a certified copy of an inscription page of the above-mentioned village’s internal regulations, although the regulations themselves are not included, because they were destroyed in the flood of [redacted] of [redacted] of [redacted]. – In addition, we report that no antecedents were located that indicate that the above-mentioned village has delimited its lands, and therefore it is not possible to provide certified copies of land demarcation, allotment and assignment certifications.”**

The report sent by the National Agrarian Registry state branch office was supplied to the contending parties by agreement of [redacted] in which it was also provided that the court would request that the Agrarian Attorney General’s state office send a certified copy of the internal regulations of [redacted] village, and that the court request the official of this administrative agency to provide a certified copy of the inscription page of the internal regulations of the above-mentioned population center (see pages 45 to 51 of the file).

In response to the requests of this court, in file number [redacted] dated [redacted] of [redacted] of [redacted] the Agrarian Attorney General’s state official sent a certified copy of the internal regulations approved on [redacted] of [redacted] of [redacted] in the [redacted] [redacted] [redacted]. The regulations were provided to the parties in the dispute in accordance with [redacted] of [redacted], and they expressed no opposition (see pages 52 to 69 of the file).

The hearing scheduled for the [redacted] of [redacted] of [redacted] did not take place because the cited village's ejido commission members appeared without legal representation (see pages 70 to 83 of the file).

Later, in document [redacted] dated the [redacted] of [redacted] of [redacted], the National Agrarian Registry's state official sent a certified copy of the inscription page of the [redacted] [redacted] ejido's internal regulations, which was provided to the parties to the litigation by the agreement of [redacted] of [redacted] of [redacted] (see pages 84 to 87 of the file).

THIRD.- The hearing provided for in Article 185 of the Agrarian Law was held on [redacted] of [redacted] of [redacted] in this court's hearing room, where after the court urged the parties to reach an amicable settlement, the plaintiffs [redacted] and [redacted] [redacted], through their attorney reaffirmed the content of the initial claim which was filed on [redacted] of the same year, through which they demanded partial nullification of the [redacted] [redacted] internal regulations, recognition by this population center's assembly of the status of residents and ejido members they are seeking, and recognition of senior rights to possess four ejido parcels located in the village against which the claim was filed. At that hearing held on [redacted] of [redacted] of [redacted] the court noted that representatives of the ejido in question failed to appear, although they had been notified and served with a summons to appear and respond to the claim filed against them, causing the court to presume they were affirming the claims made in the initial complaint. Later this court continued to the phase of submitting and admitting evidence, in which only the evidence submitted by the plaintiffs [redacted] [redacted] and [redacted] was admitted (see pages 88 to 92 of the file).

..

Continuation of the court hearing was held on [redacted] of [redacted] in the courtroom of this court, where the court heard the testimony admitted into evidence of the party of the plaintiff represented by [redacted], [redacted], [redacted], and [redacted] [redacted]. The [redacted] [redacted] [redacted], president, treasurer and ejido commissioner of the [redacted] village were present at this hearing, and provided credentials of their election of [redacted], who through their attorney, indicated their willingness for it to be proposed in the ejido members' general

assembly of that population center for the plaintiffs [redacted] and [redacted] [redacted] to be made residents of the village against which the claim was made (see pages 93 to 116 of the file).

In document number [redacted] dated [redacted] of [redacted] of [redacted], the state official of the Agrarian Attorney General's Office sent a photocopy of the recommendation issued on [redacted] of [redacted] of the same year by the National Human Rights Commission for the case regarding the [redacted] [redacted] ejido, which was provided to the parties for their review in accordance [redacted] of [redacted] of [redacted] (see pages 117 to 142 of the file).

[redacted], an expert witness agreed to by both parties accepted the responsibilities conferred on [redacted] of [redacted] [redacted], and provided his expert opinion on [redacted] of [redacted] of the same year as follows:

“With regard to the official document dated [redacted] [redacted], which names me as the expert witness agreed to by the parties to the dispute; after studying the file, being sworn in and accepting this responsibility, I appeared on Thursday, [redacted] of this year at the location that is the subject of this dispute, where we met with the plaintiffs in this agrarian lawsuit; as well as with the ejido commissioner of the village who was serving as the representative of the village's ejido general assembly in which he is active, and who furthermore is a defendant party in this dispute, and human rights staff were also present as observers; after identifying ourselves and meeting to address the matter and deliver to them a photocopy of the official document of my appointment as an expert witness on behalf of both parties; we reached agreement to make a tour with the above-mentioned people, the result of which is that I am prepared to offer my expert opinion as follows:

“Responses to the questions put forth by the parties

“1.- The plot of land where the home of Mrs. [redacted] [redacted] is located comprises 400.00 square meters, with the following measurements and borders: The northern side extends 20.00 meters and borders the property of [redacted], the southern edge extends 20.00 meters and

borders the access road or one known as the central street in this place; the eastern edge extends 20.00 meters and borders property also occupied by [redacted]; the western edge extends 20.00 meters and borders the property of [redacted].

“1a.- The area of the lot where the home of Mrs. [redacted] is located comprises 400.00 square meters.
.....

“The measurements and adjacencies are as follows: The northern edge extends 20.00 meters and adjoins the property of [redacted]; the southern edge extends 20.00 meters and borders the property of [redacted] and with an unnamed street in between; the eastern edge extends 20.00 meters and borders an access road or one known as the village’s central street, the western edge extends 20.00 meters and borders the lot of [redacted]

“1b.- The land area of the plot where Mrs. [redacted]’s crops are located comprises 1,570 square meters.
.....

The measurements and adjacencies are as follows: . . .
.....

“The northern border extends 37.00 meters and adjoins [redacted] and a street in between; the southern border extends 38.90 meters and adjoins [redacted]; the eastern edge extends 44.60 meters and adjoins [redacted] and an access road in between; the western edge extends 40.00 meters and adjoins [redacted].

“1c.- The area of the parcel that is being farmed by Mrs. [redacted] comprises 4,800 square meters.
.....

The measurements and adjacencies are as follows: . . .
.....

“The northern border extends 120.95 meters and adjoins the lot of Mr. [redacted]; the southern border extends 121.24 meters and adjoins the lot of Mr. [redacted]; the eastern edge extends 44.56 meters and adjoins the lot of Mr.

[redacted]; the western edge extends 42.86 meters and adjoins the Las Chicharras ejido.

“2.- There is a building 4.00 meters wide and 6.00 meters long on the plot of land described in paragraph 1.-, which has a constructed area of 24.00 square meters, and this building is occupied by Ms. [redacted] [redacted] and her family, and is built of cement block and sand reinforced with rebar called armex in its tie columns and reinforcing bar grids and perimeter wall; it also has a roof assembly made of wood from the region and over this structure there is a layer of red sheet metal. There is also a kitchen building built of wood from the region called “horcones” and walls lined with wood called “table” and a roof of aluminum sheet metal.

“On the plot I described in paragraph 1a.- there is a building occupied by Ms. [redacted] with the following measurements: it is 12.5 meters wide and 11.10 meters long, as shown in the attached sketch and has a constructed area of 127.00 square meters. The construction consists of cement block and sand and with tie columns known as armex in the walls, reinforcing bar grids and perimeter cladding, as well as a wood roof assembly using wood of the region and a combination of aluminum and red sheet metal.

“There is no building on the lot that I described in paragraph 1b.- , it is just used by Ms. [redacted] to cultivate ataulfo mango and bourbon, Guinea and papause coffee among other crops. The entire perimeter is fenced using posts common in the region with four strands of barbed wire.

“3.- The kinds of crops being grown on the parcel in dispute are: bourbon coffee, caturra coffee and Arabica coffee, among which are orange trees and shade trees appropriate for these crops.

“4.- Illustrative plans are attached to this report.

“5.- The measurement instrument used for this expert testimony was satellite positioning known as GPS, which develops technical data via satellite; that means coordinates called U.T.M (transverse Mercator mapping), which are part of

the program covered in the [redacted] brand SC-5 e-book, and which give directions and distances, as well as the defined area of the land whether it is smooth or uneven, as is the case of the parcel in dispute. As regards the measurement of the plots of land, measurements were taken directly on the sides and borders because they are very small areas, and the buildings were measured with fiberglass measuring tape appropriate for the region.” . . .

The opinion given by the expert witness was provided to the parties per the agreement of [redacted] of [redacted], and no objections were raised. (see pages 143 to 158 of the file).
.....

In an agreement after [redacted] of [redacted] this court granted to both parties to the litigation a period of three business days to prepare their respective arguments, warning them that should they fail to do so they would forfeit this right as provided in Article 288 of the Federal Code of Civil Procedure as applied supplementary to the Agrarian Law (see pages 159 to 161 of the file).

In the final agreement of [redacted] of [redacted] of [redacted], this court declared forfeit the right of the contending parties to prepare their respective arguments, since up to that date none had been submitted, which led to that same agreement ordering the file to be turned over for the preparation of a draft definitive sentence (see page 162 of the file); and

WHEREAS:

FIRST.- This [redacted] is competent to hear and resolve this matter consistent with the provisions of Article 27, paragraph XIX of the Mexican Constitution, as amended by a decree promulgated on January three of nineteen ninety two, published in the *Diario Oficial de la Federación* on January six of the same year; Articles 163, 170, 185, 186, 187, 188, 189 and others related to the Agrarian Law; first and second sections, paragraph II, and Article 18, paragraphs IV and VI of the Organic Law on Agrarian Courts; and by the agreements of the Agrarian Superior Court plenary published in said official publication on September twenty-nine of nineteen ninety three and July seven of two thousand four, the first establishes the territorial jurisdiction of the districts for the administration of agrarian justice, sets the number

and establishes the seat of the Unitary Agrarian Courts, and the second establishes modifications to the territorial jurisdiction of [redacted] and in this city, respectively.

SECOND.- The claims of the case brought by the plaintiffs [redacted] [redacted], are limited to determining if the following benefits are or are not legally warranted:

1. To analyze partial nullification of the internal regulations approved on [redacted] of [redacted] of [redacted] in the village of [redacted], only with regard to Article 37 of that general mandate, which says: **“Article 37.- Women of the ejido who join in matrimony or common-law union with men who are not ejido members must live outside the ejido, with the ability to visit their families when they wish. It is the parents’ obligation to inform their children of this provision. Whosoever does not comply shall be evicted from the ejido, which will request that the Public Prosecutor intervene in the eviction process.”**
.....

2. To determine if it is legally warranted to recognize the plaintiff [redacted] as a resident of the village [redacted] and [redacted] as a resident and ejido member of that ejido population center.

3. In addition, to analyze if it is or is not legally warranted to recognize [redacted] as having senior rights to possess an urban lot whose northern boundary extends twenty meters and adjoins the lot of [redacted]; the southern boundary extends twenty meters and adjoins an unnamed avenue; the eastern boundary extends 20 meters along an unnamed street; and the western boundary extends twenty meters along the lot of [redacted]. Furthermore, to analyze if it is legally warranted or not to recognize [redacted] as having a senior right to possess two urban lots and an ejido parcel that are located in the defendant village. The first lot has a northern boundary extending forty meters and borders the land of [redacted] [redacted]; to the south it is forty meters long and borders a lot occupied by [redacted]; on the eastern edge it extends forty meters and borders [redacted]; and the western boundary extends forty meters along an unnamed street. The second plot’s northern boundary extends twenty meters and borders an unnamed street; its southern edge extends twenty meters and borders [redacted]; on the east it extends twenty meters along [redacted]; and on the west it

extends twenty meters and borders the lot of [redacted]. Finally, the ejido parcel's northern boundary extends one hundred twenty meters and borders the parcel of [redacted]; the southern boundary extends one hundred twenty meters and borders the parcel of [redacted]; on the east it extends forty meters and borders the parcel of [redacted]; and on the west it extends forty meters and borders the [redacted] ejido of this municipality.

4. To resolve the inscription of this judgment on the National Agrarian Registry.

THIRD.- The benefits mentioned in the initial complaint submitted the [redacted] of [redacted] of [redacted] in the central filing office of this court, consisting of the partial nullification of the internal regulations approved on [redacted] of [redacted] of [redacted] by the general assembly of the members of the [redacted] ejido regarding residential status and ejido membership in that population center and senior rights to possess three urban lots and one ejido parcel, brought by the plaintiffs [redacted] and [redacted] [redacted] are legally warranted for the following reasons:

Although the ejido members' general assembly of the [redacted] village is the ejido's highest internal authority and is composed of all the ejido members who are beneficiaries of the various agrarian measures, it bears mention that its powers are not all-embracing, that is to say, they are not absolute, since it is sufficient to see the content of Agrarian Law Articles 21 to 31 to understand this point, because with regard to the ejido's internal authorities and the ejido member general assembly's powers these articles provide the following:

- "Article 21. The ejidos' governing bodies are**
- "I. The assembly**
- "II. The ejido commission; and**
- "III. The supervisory council**

"Article 22. The supreme body of the ejido is the assembly, in which all ejido members participate
.

"The ejido commission shall maintain a registry book in which it will enter the names and basic identifying information of the ejido members who comprise the

corresponding ejido population center. The assembly shall review the entries that the commission makes consistent with the provisions of this paragraph.

“Article 23. The assembly shall meet at least once every six months or more often if its regulations or customs so indicate. The assembly shall have sole jurisdiction over the following matters:

“I. Formulation and modification of the ejido’s internal regulations;

“II. Acceptance and separation of ejido members and their contributions;

“III. Reports of the ejido commission and the supervisory council, as well as the election and removal of their members;

“IV. Accounts or balances, the use of the ejido’s economic resources and the granting of powers and appointments;

“V. Approval of contracts and agreements created to enable third parties to make use of or benefit from communal-use lands;

“VI. Distribution of profits generated by ejido activities;

“VII. Indication and demarcation of the areas necessary for the human settlement, legal property and parcels for specific use, as well as the location and relocation of the urbanized area;

“VIII. Recognition of the parceling out of economic or *de facto* benefits and regularization of the land tenure of those possessing property;

“IX. Authorization for ejido members to adopt fee simple ownership of their parcels and the contribution of communal-use lands to an association under the terms of Article 75 of this law;

**“X. Demarcation, allotment and assignment of communal-use lands , as well as the regime for their use;
.....**

“XI. Division of the ejido or its merger with other ejidos;

“XII. Termination of the ejido form of government when, following a ruling of the Agrarian Attorney General’s Office requested by the population center, it is determined that the conditions for its continuation no longer exist;
...

“XIII. Conversion from the ejido form of government to a communal form of government;

“XIV. Establishment, modification and cancelation of the collective use system; and

“XV. Other matters that the law and the ejido’s internal regulations establish.

“Article 24. An assembly meeting may be called by the ejido commission or the supervisory council, either under their own initiative or if requested by at least twenty ejido members or twenty percent of all ejido members who comprise the ejido population center. If the commission or the council fails to do so within five business days of the request, the same number of ejido members may request that the Agrarian Attorney General’s Office issue a call for an assembly meeting.

“Article 25. The assembly must be held within the ejido or in a usual place, except when there is justified cause to do otherwise. For this purpose, it must issue a call to meeting at least eight days and no more than fifteen days prior by means of bulletins posted in the most visible locations in the ejido. The bulletins shall indicate the issues to be addressed and the time and place of the meeting. The ejido commission shall be responsible for said bulletins remaining in place in the locations established for publicity purposes until the day that the assembly is held. . .

“A call to meeting issued to address any of the subjects mentioned in Article 23 paragraphs VII through XIV of this law, must be issued at least one month prior to the date scheduled for holding the assembly.

“If on the day set for the assembly the majority attendance required for a quorum is not met, a second call to meeting shall be issued immediately. In this case, the assembly shall be held in a period of no less than 8 days and no more than 30 days from the date of issuance of the second call to meeting.

“Article 26. For an assembly meeting to be valid when it results from a first call to meeting, at least one-half plus one of the ejido members must be present, unless the subjects mentioned in Article 23 paragraphs VII through XIV are to be addressed, in which case at least three-quarters of the ejido members must be present. . . .

“When an assembly meeting results from a second or subsequent call to meeting, the assembly held shall be valid regardless of the number of ejido members who attend, unless the subjects mentioned in Article 23 paragraphs VII through XIV are to be addressed, in which case the assembly shall be valid only if at least one-half plus one of the ejido members are present.

“Article 27. The assembly’s resolutions shall be validated by a majority vote of the ejido members present and compliance shall be mandatory for those absent or dissenting. In case of a tie vote, the ejido commission President shall have the deciding vote.

“When the subjects mentioned in Article 23 paragraphs VII through XIV of this law are addressed, a two-thirds majority vote for approval by those attending the assembly shall be required.

“Article 28. When an assembly addresses the subjects mentioned in Article 23 paragraphs VII through XIV of this law, a representative of the Agrarian Attorney General’s Office and a certifying public officer must be present. For this purpose, the person issuing the call to meeting must notify the Attorney General’s Office regarding the assembly

meeting with the same prior notification required for the call to meeting and must provide whatever is necessary for the certifying public officer's attendance. The Attorney General's Office shall verify that the call to meeting has been issued for addressing the subjects mentioned in this article, that it has been done within the time period and observing the formalities indicated in Article 25 of this law.

"Assemblies that meet in contravention of the provisions of this article shall be null and void.

"Article 29. When the assembly resolves to terminate the ejido system of government, the respective agreement shall be published in the *Diario Oficial de la Federación* and in the newspaper with the largest circulation in the area where the ejido is located.

"Prior to the liquidation of the ejido's remaining obligations, the ejido lands, with the exception of those that comprise the area necessary for human settlement, shall be bestowed with fee simple ownership on the ejido members consistent with the rights that correspond to them, except when forests or tropical jungles are involved. The land area dedicated to this use assigned to each ejido member may not exceed the limits set for small property holdings. If after allotment there is excess property or if the property is forested or jungle, these lands shall become property of the nation. . .

"Article 30. For the attendance of a legal representative agent at an assembly to be valid, a power of attorney duly signed before two witnesses who are ejido members or residents shall be adequate. If the ejido member assigning the agent unable to sign, he/she shall imprint his/her fingerprint on the document and shall ask a third party to sign and enter both names.

"When an assembly meets to address the subjects mentioned in Article 23 paragraphs VII through XIV of this law, the ejido member may not designate a legal representative agent.

"Article 31. Minutes shall be recorded for each and every assembly and shall be signed by the members of the

ejido commission and the supervisory council in attendance, as well as by any ejido members present who wish to sign. If any person required to sign is unable to do so, he/she may imprint his/her fingerprint under the place his/her name is written.

“When there is dissent with regard to any of the agreements recorded in the minutes, any ejido member may sign in protest and make note of their dissent.

“When an assembly addresses the subjects mentioned in Article 23 paragraphs VII through XIV of this law, the minutes must pass review as accurate by the certifying public officer and must be signed by the Agrarian Attorney General’s Office representative in attendance and must be entered into the National Agrarian Registry. “

As mentioned, the legal precepts transcribed herein indicate that the ejido members’ general assembly is the ejido’s most authoritative internal body in which all its members participate; and that the assembly has the exclusive jurisdiction to indicate and delimit the areas necessary for the human settlement, legal property and parcels for specific uses, and the location and relocation of the urbanized area, as well as the recognition and distribution of economic and *de facto* benefits and the regularization of the land tenure of those who possess the ejido’s lands. However, in addition, Article 23, paragraph I of the Agrarian Law establishes that the ejido members’ general assembly has sole jurisdiction for formulating and modifying the ejido’s internal regulations, which is what happens when it draws up, presents and approves its internal regulations which take into account the characteristics of the lands conferred, their degree of development for production, operational needs for the healthy life of the population center and other social aspects, including the rights and obligations of ejido members and residents, including the rights of those legally possessing lands, and it enters these regulations in the National Agrarian Registry to remain in compliance with formal procedures and, above all, to be opposable in dealing with third parties.

However, although the general assembly of a population center’s ejido members is the ejido’s supreme body in which all the ejido members of the village participate and on which the law confers a variety of exclusive powers, this does not mean that in

authority transgresses their rights to legality and legal security, since aside from the gender discrimination that it fosters, it destroys the social balance that must exist in the conformation of families because the right they have to reside and travel is a Constitutional right approved by the permanent ruling body; but in addition, no precept of the Agrarian Law grants that power to the ejido members' general assembly such that it may use its internal regulations to order ejido women if they are not married or living in common-law union with men in the village they must leave or live outside the village, since if that had been the intent of the federal legislature it would have been discussed in its draft amendment that gave rise to the change in Article 27 of the Constitution and the creation of the Agrarian Law.

Furthermore, Article 37 of the defendant ejido's internal regulations also violates the rights of the village's men because it indirectly obligates them to marry or live in common-law union with women from that population center, when under the Constitution they are free to choose another person outside of that population.

As a consequence, partial nullification of the internal regulation approved on [redacted] of [redacted] of [redacted] by the [redacted] ejido members' general assembly is legally warranted solely owing to what it says in its Article 37, which provides: **Article 37. -Women of the ejido who join in matrimony or common-law union with men who are not part of the ejido must live outside the ejido, with the ability to visit their families when they wish. It is the parents' obligation to inform their children of this provision. Whosoever does not comply shall be evicted from the ejido, which will request that the Public Prosecutor intervene in the eviction process."** As can be seen, this article infringes on the plaintiffs' [redacted] individual rights which is why they complained that that provision prohibits them from marrying or joining with individuals who are outside the defendant ejido.

In addition, in conducting the analysis corresponding to the second benefit claimed in the initial complaint filed [redacted] consisting of the recognition of the status as residents and ejido members of [redacted] [redacted] this [redacted] [redacted] the court deems this benefit of recognition of resident and ejido member status sought by [redacted] is legally warranted for the following reasons:

By the mere fact that Article 37 of the defendant ejido's internal regulations approved [redacted] infringes on the rights of the plaintiffs to live in the population center, the ejido members' general assembly is denying the right to recognition of resident and ejido member status that the plaintiffs are claiming through a normal agrarian trial; while the documentary certifications show in the testimony given on [redacted] of [redacted] of [redacted] by [redacted] [redacted] [redacted], which explained that the claimants have been in possession of the urban lots and an ejido parcel for approximately ten years, and that they are well-known throughout the ejido because they have always lived there and are the daughters of people who possessed lands.

Therefore, if the ejido members' general assembly in the defendant village with this regulatory stipulation prohibited the claimants from living in the ejido, this constituted a negative factor for their recognition of their resident status. Then, taking into account the provisions of Article 13 of the Agrarian law, which posits that the status of ejido resident must be recognized by the ejido assembly or the competent agrarian court, we can deduce from that norm that the ejido members' general assembly is empowered to recognize the applicant as having resident status, but if there is a negative factor in the internal regulations of the defendant ejido such that the plaintiffs [redacted] and [redacted] [redacted] are prevented from living in that population center, clearly the claimants resorted in a tacit manner to the strict terms of the Agrarian Law's Article 13 in requesting recognition of their resident status, since the provisions of Article 37 of the population center's internal regulations articulate the issue relevant to the claimants' intent to be legally recognized with resident status, for which they were obliged to appear before this court so that they might receive resident status.

This consideration is reinforced by the precedent set by the Second Chamber of the Mexican Supreme Court, published in the *Semanario Judicial de la Federación* and its official journal Volume XIV, Ninth Period, in the month of October in two thousand one, whose exposition on page 365 says: **“RESIDENTS. IT IS THE RESPONSIBILITY OF THE EJIDO MEMBERS' ASSEMBLY TO RECOGNIZE THEM AND IN THE CASE OF DENIAL, THE AFFECTED PARTY MAY BRING SUIT AGAINST SAID INTERNAL BODY IN THE COMPETENT UNITARY COURT (INTERPRETATION OF AGRARIAN LAW**

ARTICLE 13 AND THE ORGANIC LAW ON AGRARIAN COURTS ARTICLE 18 PARAGRAPH VI). - If we take into account that residents may aspire to become ejido members and that they will have the right to be recognized as such if they satisfy the requirements of being Mexicans, of legal age and residing for a minimum of one year on the lands of the population center, and demonstrate that they have worked those lands; and in addition that the powers granted the jurisdictional bodies in agrarian matters are compatible with the nature of the ejido and of the duties assigned to the ejido's internal governing bodies, it is legally warranted to conclude that the request for recognition as a resident provided for in Agrarian Law Article 13 must be presented and discussed in the ejido members' general assembly, which as the highest internal governing body of the ejido is empowered to determine the assignment of lands that are not formally parceled, to undertake and recognize the distribution of economic or *de facto* benefits, to regularize the land tenure of those in possession or who lack the corresponding certificates; and only when an unfavorable ruling as been made may interested parties exercise their rights by appealing to the jurisdiction of the competent Unitary Agrarian Court, which is consistent with Article 18 paragraph VI of the Organic Law on Agrarian Courts, which have authority to hear disputes between ejido members, communal farmers, those possessing lands or residents, as well as disputes that may arise between these and the governing bodies of the population center, such that only when the assembly denies an interested party their right may that party take action to bring suit against said body before the Unitary Agrarian Court, which may validly rule in that party's favor; this is how Agrarian Law Article 13 must be understood when it establishes that recognition of residency comes from the assembly or from the competent agrarian court; any other interpretation would contravene the general principle of right that states that where the law does not make a distinction, no distinction must be made."

Another aspect is that it is not legally warranted to recognize the plaintiff [redacted] as a member of the [redacted] ejido as was sought in the second benefit identified in section B) of the initial complaint filed, because first one must use recourse to the ejido members' general assembly of that population center to request that status of recognized agrarian rights, for said

assembly to rule on that issue, since this is the exclusive power that corresponds to the ejido's highest ranking body, as this is what is set forth in Article 23, paragraph II of the Agrarian Law. Therefore, in this legal aspect, in principle recognition of agrarian rights cannot come from a jurisdictional decision if the ejido members' general assembly of the defendant ejido has not previously ruled on the request, because that recognition is the exclusive responsibility of the ejido members' general assembly and only when there is a negative ruling will the [redacted] decide on said request.

As regards the benefit identified in section C) of the initial complaint filed on [redacted] consisting of recognition of the senior right to possession of the ejido lands that the plaintiffs [redacted] [redacted] have in their possession in [redacted] [redacted], said benefit is legally warranted for the following reasons:

The exercise of the plenary action of possession or senior right to possess ejido lands that the plaintiffs in the agrarian trial are claiming as the third benefit does not imply analyzing any question of ownership, but is only limited to the enjoyment of the possession of the claimed ejido real estate, and for that reason, the claimants need only demonstrate that they have legal title that gives the right to possession; therefore, we may say that in the matter of an *actio publiciana* or plenary action of possession such as that being made by the claimants, it is necessary that they show the following four elements:

1. That they have legal title to possess the ejido lots they are seeking;
2. That they acquired the title in good faith;
3. That the defendant or defendants have possession of the lots referred to in the title, or that they are being interfered with in their possession; and
4. That the plaintiffs have the right to possess that is senior to that of the defendants.

From the foregoing, we can say that the plenary proceedings for possession of the ejido lots must be identified, since as was mentioned, if this action is not a matter that implies analyzing the ownership of the item being sought, it is then

necessary to limit it to the enjoyment of possession of the disputed real estate.

Now, the plaintiff [redacted] demonstrated that she has legal title to possess the urban lot with the following measurements and borders: the northern boundary extends twenty meters and adjoins the lot of [redacted]; the southern boundary extends twenty meters and adjoins a unnamed avenue; the eastern boundary extends twenty meters and adjoins an unnamed street; and the western boundary extends twenty meters and adjoins land of [redacted], according to the inheritance certificate dated the [redacted] of [redacted] of the year [redacted], which constitutes the foundational document for her claiming the senior right to possess that ejido real estate, located at [redacted] [redacted], because that title was issued by her father, who specified that the lot being transferred which is now in dispute was being left as a legacy to his daughter [redacted].

Also, if the document analyzed previously included a demonstration of the transfer as an inheritance of an urban lot located in the defendant village, we can say that said document is the legal title required to establish the acceptability of the plenary action of possession sought by [redacted], since by legal title we understand a legal document, that is to say, any that contains the essential elements and fulfills the requirements for validity so that the right can be made fully effective; therefore, the effects of the legal document in question are made to consist of the transfer in her favor of the ejido plot that was given as an inheritance the [redacted] of [redacted] of [redacted]. The lot that in accordance with the opinion given and ratified by the jointly agreed upon expert witness on [redacted] of [redacted] of [redacted] covers four hundred square meters, whose extent and borders were indicated in the preceding paragraph, located as mentioned in the urban area of [redacted].

The second element of the action brought by the plaintiff [redacted], consists of the good faith of the previously analyzed document, and it was simply shown because her predecessor inherited this real estate on [redacted] of [redacted] of the year [redacted], which indicated that in good faith that lot was transferred to her as a symbol of her family legacy, given that we must not forget that one of the formal elements of any contract or agreement is good faith among the parties so that there is reciprocity in concessions.

As regards the third element of the action brought, relative to demonstrating that the defendants are in possession of the ejido land transferred by inheritance or that she is being impaired in its possession, this was demonstrated by the dispute that occurred over the plaintiff's possession of that lot located in the defendant village, since approval of an article in its internal regulations indicating that ejido women who join in marriage or common-law union with men who are not part of the ejido must live outside the ejido, and in obligating parents to inform their daughters of this provision constitutes a demonstration of the degree of dispute caused by the claimant's demand for possession of that lot.

The possession of that lot was demonstrated by the witness testimony of [redacted], made at the hearing held on [redacted] of [redacted], in which the witnesses asserted that the plaintiff has had possession of that lot for more than nine years and that she is cultivating the ejido lands.

Also, as regards the last element of the plenary action brought by the plaintiff in this agrarian trial, which consists of demonstrating that her right to possession is senior to that alleged by the defendant assembly, the foregoing analysis effectively enables us to conclude that [redacted] holds the senior right to possess that ejido lot, because it was transferred to her as an inheritance from her father, which also leads to the conclusion that this is a lot that by right she can possess.

Now, with regard to the ejido lots claimed in possession of the plaintiff [redacted] [redacted], said plaintiff also has the senior right to possess the lots asserted in her initial complaint, because in the first place, the documents of [redacted] of [redacted] of [redacted] and the [redacted] of [redacted] of [redacted] demonstrate the she has legal title to possess the two urban lots and the ejido parcel located at [redacted].

The first lot is stated in the document of [redacted] of [redacted] of [redacted] to have a northern border extending forty meters and adjoining the lot of [redacted]; a southern border extending forty meters and adjoining the lot of [redacted]; an eastern border extending forty meters and adjoining the lot of [redacted]; and a western border extending forty meters and adjoining the parcel of [redacted].

The second lot covers an area of twenty by twenty square meters, according to the inheritance document dated April three of two thousand two, with the borders of: on the north the lot of [redacted]; on the south the lot of [redacted]; on the east the lot of [redacted]; and on the west it adjoins an unnamed street of the defendant village.

As for the section of the ejido parcel described in the document of [redacted] of [redacted] of [redacted], the northern edge borders the land of [redacted]; the southern side borders the lot of [redacted]; on the east it borders the lot of [redacted]; and on the west the lot of [redacted]; and it consists of an approximate area of twelve “Spanish acres” or four thousand eight hundred square meters according to the opinion of the expert witness agreed to by the parties.

The documents that form the basis for the case that the plaintiff [redacted] presented to demonstrate the senior right to possess those ejido lands constitute legal title that gives her the right to claim legal possession since by legal title we understand the legal action with which the underlying cause of the possession is shown, and a legal action is any that brings together the essential elements and fulfills the requirements for validity so that the a right may be put fully into effect; therefore, the effects produced by the aforementioned legal actions are made to consist of the transfer in her favor of two urban lots and portion of a parcel located in [redacted], which were described in this judgment in accordance with the documents of [redacted] of [redacted] of [redacted] and [redacted] of [redacted], which appear on pages 8, 9, and 92 of the file, which pages show full proof of their content consistent with the provisions of Federal Code of Civil Procedure Article 203 with supplemental application to the Agrarian Law.

The second element of the claim made by the plaintiff [redacted] consists of the good faith of the documents analyzed, which also has been demonstrated, because the documents in question were issued in her favor by [redacted] [redacted], the first in his[her] role as seller of an urban lot located in the defendant village, and the second it his[her] role as the parent giving her a lot and a portion of a parcel located in that population center as an inheritance. As a result, we can say that the documents were

issued in good faith and are a legal action transacted between the parties.

As regards the third element of the plenary action of possession, this has also been demonstrated because in the hearing held on [redacted], her witnesses [redacted] were in agreement in affirming that the claimant has had possession of those lots for approximately ten and fifteen years, and that she acquired them through a purchase/sale agreement and as an inheritance from her father, [redacted], which was not disproven by the defendant ejido's representatives, who even when they appeared, did not make any allegations in this regard.
.

The fourth and final element of the plenary action of possession claimed by the plaintiff [redacted] was demonstrated because from all the evidentiary material, it is possible to conclude that she has the senior right to possess those ejido lands, and we say possess because the regular trial of the complaint filed is limited solely to this legal subject, and thus does not cover demonstrating ownership or property right, because according to the report from the National Agrarian Registry's state branch officer in his document of [redacted] of [redacted] of [redacted], and in [redacted], the assembly has not conducted the demarcation, allotment and assignment of the lands within its boundaries. Therefore, if the defendant ejido's highest governing body has not conducted what is referred to in Article 56 of the Agrarian Law, the ownership of ejido lands continues to belong to that population center.

In the considerations set forth, this [redacted] concludes that the plaintiffs [redacted] [redacted] have the senior right to possess the ejido plots of land described in their initial complaint presented on the [redacted] of [redacted] of [redacted], since these lands were transferred to them by legal actions conducted in accordance with the law as was shown in the foregoing analysis.

The opinion available for consultation in the Appendix of nineteen ninety-five, Volume IV is of special relevance. On its page nine the heading and text say: "**ACTIO PUBLICIANA OR PLENARY POSSESSION. IT MAY BE SOUGHT EITHER BY THE OWNER OR THE POSSESSOR OF THE THING.- Acts of *actio publiciana* or plenary possession and repossession are**

actual actions; the former protect possession and the latter protects ownership; in both cases judgments have the effect of requiring payment, because the defendant must restore the thing along with its fruits and increase, both belong to the person who is not in possession of the thing which they have the right to possess by legal title, even when the person is not certified to be the owner in the *publiciana*; and in the case of repossession because it involves ownership of a thing, thus in that case the plaintiff must prove to have acquired legal title and in good faith, and in this way to have ownership. Under these conditions, the person having ownership of the thing is thus exclusively subject to that for repossession, which distinguishes it from *actio publiciana* or plenary possession”.....

As a result, the fourth and final benefit claimed by the plaintiffs [redacted] [redacted] is legally warranted and so requires that this judgment be entered into the National Agrarian Registry so that a marginal annotation is made to Article 37 of the internal regulations approved by the defendant ejido [redacted] and the article is declared null. In addition, entry should be made showing that the claimants have resident status in that population center. . .
.....

Finally, it must be said that the motivation and foundation for the judgments are of great importance for resolution in accordance with the law, as required by Article 16 of the Constitution; yet from Article 189 of the Agrarian Law we understand the power that jurisdictional bodies have in this matter to rule on known truths without circumventing the principle of motivation and foundation required by the Constitutional article cited; thus in accordance with the foregoing, this [redacted] concludes that owing to the exhaustive nature of the legal examination of the evidence provided by the parties, the benefits claimed by the plaintiffs [redacted] [redacted] are determined to be legally warranted.

The precedent set by rebuttal of the thesis approved by the Second Chamber of the Mexican Supreme Court published on page 419 of the *Semanario Judicial de la Federación* and its Journal, Ninth Period, Volume XVI of the month of October two thousand two is relevant to the result. Its heading and text are quoted here: **“PROOF IN AGRARIAN MATTERS. FOR ITS EVALUATION THE AGRARIAN COURT MAY APPLY THE FEDERAL CODE OF CIVIL PROCEDURE OR MAY USE**

RECOURSE TO ITS OWN CONVICTION.- Article 189 of the Agrarian Law provides in a generic way for agrarian courts' judgments to be dictated by known truths, without the need to be subject to the rules for evaluating evidence, but rather giving consideration to the facts and documents which in the estimation of the courts are required in good conscience for providing foundation and justification for their judgements; that is, the legislators expressly set aside the system for evaluating the evidence being assessed in order to adopt the use of the judges' own conviction, thereby establishing an exception to the trial procedure of expressly relying on the Federal Code of Civil Procedure as provided in Article 167 of the aforementioned law. However, this measure does not include arbitrary powers for the court in evaluating evidence, since Article 189 itself imposes on the judge the duty to have foundation and justification for judgments. In this context, whenever Article 189 considers failing to use specific standards that regulate the evaluation of evidence and because of the broad powers that it grants to judges for this purpose, in order to honor the guarantee of legality provided for in Article 16 of the Mexican Constitution, agrarian courts may use the Federal Code of Civil Procedure for assessing evidence, since the aforementioned Article 189 does not expressly or implicitly prohibit them to use the cited code, such that its application is correct, without there being an obligation to use it, since the Agrarian Law establishes that evidence may be evaluated on the basis of their own conviction."

Owing to what has been documented and with foundation, and also on the basis of Article 27 paragraph XIX of the Mexican Constitution and Articles 13, 163 and 189 of the Agrarian Law, we hereby order it be

RESOLVED THAT:

FIRST.- On the basis of what has been documented and the third item of consideration [whereas] of this judgment, we declare legally warranted the act of partial nullification of the internal regulation approved on [redacted] of [redacted] of [redacted] by the ejido members' general assembly of [redacted]; the formal recognition of resident status in this population center, and the senior right to possess three urban lots and one ejido parcel located in the defendant village sought by the

plaintiffs[redacted] [redacted]. Therefore, this [redacted] hereby declares the nullification related to the defendant ejido's internal regulations approved the [redacted] of [redacted] of [redacted] solely as it applies to Article 37 of these regulations and recognition of the claimants' resident status in that population center owing to their possession of the urban lots and ejido parcel described in this judgment; finally it is hereby declared that they have the senior right to possess the three urban lots and the ejido parcel that were transferred to them on [redacted] of [redacted] of [redacted] [redacted]of [redacted] of [redacted], located on the territory [redacted], but there is no place to recognize the plaintiff [redacted] as an ejido member of this population center for the reasons explained in the above-mentioned third consideration [whereas] of this judgment.

SECOND.- On the basis of Article 152 of the Agrarian Law, this judgment shall be entered in the National Agrarian Registry in order for marginal annotation to be made corresponding to Article 37 of the internal regulations approved on[redacted] of [redacted] of [redacted], that is, to make this article void and without effect and so that it be noted that the plaintiffs [redacted] [redacted] have resident status in the village [redacted] [redacted] [redacted].

THIRD.- As required, the plaintiffs [redacted] [redacted] and the ejido commission members of the defendant village shall be notified of this judgment. When this is accomplished in a timely manner, the file shall be archived as a closed case.

TO BE PERFORMED AS DETERMINED:

Thus is decided and signed [redacted] [redacted] [redacted] before [redacted] [redacted] who acts and witnesses.