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issuance by the trial court of the order granting the same and admitting the complaint-in-intervention was attended with grave abuse of discretion. Consequently, the Court of Appeals correctly set aside and declared as null and void the said order.

WHEREFORE, the petition is *DISMISSED*. The assailed Decision dated July 25, 2003 and Resolution dated January 23, 2004 of the Court of Appeals in CA-G.R. SP No. 74456 are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Austria-Martinez , Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

Panganiban, C.J., (Chairperson), in the result.

SECOND DIVISION

[G.R. No. 163743. January 27, 2006]

DOLORES PINTIANO-ANNO, *petitioner, vs.* **ALBERT ANNO (deceased) and PATENIO SUANDING,** *respondents.*

SYLLABUS

1. CIVIL LAW; PERSONS AND FAMILY RELATIONS; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP; ALL PROPERTY OF THE MARRIAGE IS PRESUMED TO BE CONJUGAL IN NATURE; PROOF OF ACQUISITION OF THE PROPERTY DURING THE MARRIAGE, REQUIRED.— [A]ll property of the marriage is presumed to be conjugal in nature. However, for this presumption to apply, the party who invokes it must first prove that the property was

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acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* to the operation of the presumption in favor of the conjugal partnership. To prove that spouses Anno acquired the subject land during their marriage, petitioner presented her *1963 marriage contract* with respondent Albert and the initial *1974 tax declaration* over the property. She likewise testified that she and her husband diligently paid the taxes thereon and worked on the land. However, a careful examination of the records shows that petitioner's evidence failed to prove that the subject land belongs to the conjugal partnership of spouses Anno.

2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; LIES ON THE PARTY WHO ALLEGES THE AFFIRMATIVE OF AN ISSUE.— It is a basic rule in evidence that he who alleges the affirmative of an issue has the burden of proof. *The plaintiff must produce a preponderance of evidence thereon, relying on the strength of his own evidence* and not upon the weakness of the defendant's. In the case at bar, we find that petitioner failed to substantiate by preponderance of evidence her claim that the subject land was conjugal in nature. *Petitioner did not identify when she and her husband, respondent Albert, first occupied and possessed the land.* Neither did she present any witness to prove that they first occupied the land during their marriage and that they both worked on the land. While petitioner claimed that they also hired a caretaker to oversee the land, the records show that the caretaker was appointed only in 1989. Indeed, even the documentary evidence adduced by petitioner failed to show when exactly the spouses Anno first took possession of the land. While the initial tax declaration she presented was dated 1974, it cannot be automatically deduced therefrom that occupation of the subject land was likewise done in the same year. To so conclude will amount to speculation or conjecture on the part of the court.

3. CIVIL LAW; LAND TITLES AND DEEDS; TAX DECLARATIONS, ESPECIALLY OF UNTITLED LANDS, ARE CREDIBLE PROOF OF CLAIM OF OWNERSHIP AND ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER.— [D]eclaration of a land for taxation purposes cannot be equated with its acquisition for, in the ordinary course of things, occupation of a piece of land usually comes prior to the act of declaring it for tax purposes. More importantly, the 1974 tax

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declaration presented by petitioner cannot be made a basis to prove its conjugal nature as the land was declared for tax purposes solely in the name of her husband, respondent Albert, who sold the land as his exclusive property. In a long line of cases, this Court has held that tax declarations, especially of untitled lands, are credible proof of claim of ownership and are good *indicia* of possession in the concept of an owner.

APPEARANCES OF COUNSEL

Benjamin B. Fernando, Jr. and *Torres G. A-ayo* for petitioner.

Molintas Law Office for respondents.

D E C I S I O N

PUNO, *J.*:

This is an appeal from the Decision and Resolution of the Court of Appeals, dated January 23, 2004 and May 24, 2004, respectively, affirming the Decision of the Regional Trial Court (RTC) of La Trinidad, Benguet, which dismissed the complaint for cancellation of transfer documents and damages, with prayer for preliminary injunction, filed by petitioner Dolores Pintiano-Anno before the Municipal Trial Court (MTC).

First, the facts. Petitioner Dolores Pintiano-Anno and respondent Albert Anno (spouses Anno) were married on January 23, 1963. No children were born out of their marriage. Petitioner contends that during their marriage, they acquired a 4-hectare public, unregistered, virgin, agricultural land in Lamut, Becket, La Trinidad, Benguet. *In 1974, the land was declared for tax purposes solely in the name of her husband, respondent Albert Anno, under tax declaration no. 12242.* Petitioner contends that she and her spouse had been in open, continuous, exclusive and notorious possession and occupation of the subject land; that they both worked on the land, and, that they also hired a caretaker to oversee it. The 1985 tax declaration described the land as camotal and decreased its area to 2.6735 hectares as a result of tax mapping.

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Petitioner contends that without her knowledge, respondent Albert executed two documents of transfer covering the subject land. In an *Affidavit of Waiver, dated January 30, 1996,* respondent Albert waived and quitclaimed in favor of petitioner's first cousin, respondent Patenio Suanding, his rights over a portion of the subject land. More than a year later, respondent Albert conveyed to respondent Suanding the remainder of the land in a *Deed of Sale, dated November 29, 1997. In both documents, respondent Albert declared that he is the lawful owner and possessor of the subject land.* Thus, the documents of transfer did not bear the signature and written consent of petitioner as the wife of the vendor, respondent Albert. Thereafter, the subject land was transferred by respondent Suanding to third persons, Myrna Nazarro and Silardo Bested.

Petitioner filed a case against respondents Albert Anno and Suanding with the MTC of La Trinidad, Benguet, for Cancellation of the Waiver of Rights, Deed of Sale and Transfer Tax Declarations, and Damages, with a prayer for issuance of a writ of preliminary injunction. In her complaint,[1] petitioner alleged that the subject land belongs to the conjugal partnership of spouses Anno, and thus could not have been validly conveyed by respondent Albert to respondent Suanding without her written consent as spouse.

Respondent Albert did not file an Answer.[2] For his part, respondent Suanding took the stand. He testified that respondent Albert represented to him that the land was his exclusive property as the land was part of his inheritance and he had been in possession thereof prior to his marriage to petitioner. He likewise presented a 1997 Certificate[3] from the Office of the Municipal Assessor of La Trinidad, Benguet, stating that no improvements were listed in their records as introduced by respondent Anno on the subject land.

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[1] CA *Rollo*, pp. 95-100.

[2] Respondent Albert died during the pendency of the case.

[3] Original Records, p. 150.

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After trial, the *MTC ruled in favor of petitioner. It found that both parties failed to sufficiently prove by convincing evidence the nature of ownership of the subject land.* However, the MTC applied Article 116 of the Family Code and ruled that the subject land is presumed to belong to the conjugal partnership of spouses Anno. It held that the conveyance of the land to respondent Suanding was void as it was done without the marital consent of petitioner, the wife of vendor-respondent Albert.[4]

Respondent Suanding appealed to the RTC of La Trinidad, Benguet. He maintained that the subject land is the exclusive property of respondent Albert Anno. *The RTC found for respondent Suanding.*[5] It ruled that as petitioner failed to adduce evidence that the subject land was acquired by the spouses during their marriage, the presumption that the property belongs to their conjugal partnership could not be made to apply. The RTC thus declared the land to be the exclusive property of the vendor, respondent Albert Anno, which he could validly sell without the consent of petitioner-spouse.

The Court of Appeals affirmed the decision of the RTC.[6] It likewise found petitioner's evidence insufficient to prove that the subject land was acquired by spouses Anno during their marriage.

Hence, this petition.

The issue in the case at bar is whether the subject land belongs to the conjugal partnership of gains of spouses Anno and thus cannot be validly conveyed by one spouse without the consent of the other.

We find no merit in the petition.

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[4] Decision, dated May 30, 2000; *Rollo*, pp. 39-44.

[5] CA *Rollo*, pp. 59-64.

[6] Decision, dated January 23, 2004, penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Arturo D. Brion; *Rollo*, pp. 33-38.

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Indeed, all property of the marriage is presumed to be conjugal in nature.[7] However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* to the operation of the presumption in favor of the conjugal partnership.[8]

To prove that spouses Anno acquired the subject land during their marriage, petitioner presented her *1963 marriage contract* with respondent Albert and the initial *1974 tax declaration* over the property. She likewise testified that she and her husband diligently paid the taxes thereon and worked on the land.

However, a careful examination of the records shows that petitioner's evidence failed to prove that the subject land belongs to the conjugal partnership of spouses Anno.

It is a basic rule in evidence that he who alleges the affirmative of an issue has the burden of proof. The *plaintiff must produce a preponderance of evidence thereon, relying on the strength of his own evidence* and not upon the weakness of the defendant's.[9]

In the case at bar, we find that petitioner failed to substantiate by preponderance of evidence her claim that the subject land was conjugal in nature. *Petitioner did not identify when she and her husband, respondent Albert, first occupied and possessed the land.* Neither did she present any witness to prove that they first occupied the land during their marriage and that they both worked on the land. While petitioner claimed that they also hired a caretaker to oversee the land, the records show that the caretaker was appointed only in 1989. Indeed, even the documentary evidence adduced by petitioner failed

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[7] Article 160, Civil Code.

[8] *Spouses Estonina v. Court of Appeals,* 334 Phil. 577 (1997); *Torela v. Torela,* 93 SCRA 391 (1979); *Ponce De Leon v. Rehabilitation Finances Corporation,* 36 SCRA 289 (1970).

[9] *Spouses Aspi v. Court of Appeals,* 236 SCRA 94 (1994), citing *Jison v. Court of Appeals,* 286 SCRA 495 (1998).

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to show when exactly the spouses Anno first took possession of the land. While the initial tax declaration she presented was dated 1974, it cannot be automatically deduced therefrom that occupation of the subject land was likewise done in the same year. To so conclude will amount to speculation or conjecture on the part of the court. As correctly pointed out by the appellate court, declaration of a land for taxation purposes cannot be equated with its acquisition for, in the ordinary course of things, occupation of a piece of land usually comes prior to the act of declaring it for tax purposes. More importantly, the 1974 tax declaration presented by petitioner cannot be made a basis to prove its conjugal nature as the land was declared for tax purposes solely in the name of her husband, respondent Albert, who sold the land as his exclusive property. In a long line of cases, this Court has held that tax declarations, especially of untitled lands, are credible proof of claim of ownership[10] and are good *indicia* of possession in the concept of an owner.[11]

The foregoing circumstances do not show when the property was acquired by spouses Anno. The presumption of the conjugal nature of the property allegedly acquired by the spouses Anno during the subsistence of their marriage cannot be applied.[12] Consequently, we uphold the findings of the Court of Appeals that *the subject land is the exclusive property of respondent Albert Anno which he could validly dispose of without the consent of his wife.*

IN VIEW WHEREOF, the petition is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Garcia, JJ.,* concur.

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[10] *Manongsong v. Estimo*, 404 SCRA 683 (2003); *Ranola v. Court of Appeals*, 322 SCRA 1 (2000); *Director of Lands v. IAC,* 209 SCRA 214 (1992).

[11] *Heirs of Anastacio Fabela v. Court of Appeals,* 362 SCRA 531 (2001).

[12] *Francisco v. Court of Appeals*, 359 Phil. 520 (1998).