Supreme Court E-Library

"x x x the vessel's master, owner or employees are duty bound under the cited codal section under pain of the penalty of fine therein provided to check and verify the correct weight of the cargo or shipment so as to prevent a misdeclaration or underdeclaration of weight. The vessel master's discharge of such obligation imposed by law to properly determine and verify the weight of cargos carried by it is certainly pertinent to and important for the proper assessment of the collectible customs duties and taxes, and is not a burdensome task in the present era of containerized cargoes."[7]

WHEREFORE, the decision of respondent court is hereby *MODIFIED* by setting aside the reduction in fine therein ordered, and REINSTATING the administrative fine of ₱58,400.00 imposed in the petitioner's decision.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, Sarmiento, and *Regalado, JJ.,* concur.

FIRST DIVISION

[G.R. No. 56838. April 26, 1990]

GENARO NAVERA AND EMMA AMADOR, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, ARSENIO NARES AND FELIX NARES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT; CONCLUSIVE WITH THE SUPREME COURT. — As found by the trial court and respondent appellate court, the property in dispute, namely, the whole of Lot 1460 is titled

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[7] *Commissioner of Customs v. CTA, supra,* p. 259.

Supreme Court E-Library

in the name of "Elena Navera, *et al.*," the phrase *"et al."* referring only to Eduarda, sister of Elena since the other brothers of Elena and Eduarda namely, Mariano, Basilio and Felix had received their shares from the other properties of their father Leocadio Navera. These factual findings are conclusive upon Us. Thus, when Elena Navera died sometime in 1924, her compulsory heirs including respondents Arsenio Nares and Felix Nares acquired Elena's share in Lot 1460 by inheritance, which is one-half of Lot 1460. As to the other half of Lot 1460 owned by Eduarda Navera, the latter sold the same to two vendees, one in favor of respondent Arsenio Nares and the other in favor of Mariano Navera, petitioner's predecessor-in-interest. The conclusions and findings of facts by the trial court are entitled to great weight and will not be disturbed on appeal unless for strong and cogent reasons because the trial court is in a better position to examine real evidence as well as to observe the demeanor of witnesses while testifying on the case.

2. **ID.; CIVIL PROCEDURE; PRESCRIPTION; AS A DEFENSE, MUST BE PLEADED IN THE ANSWER.** — Prescription as a defense, must be expressly relied upon in the pleadings. It cannot be availed of, unless it is specially pleaded in the answer; and it must be proved or established with the same degree of certainty as any essential allegation in the civil action. In the instant case, petitioners, who were the defendants in the lower court, did not claim acquisitive prescription in their answer, and even if they did, it cannot be given judicial sanction on mere allegations. The law requires one who asserts ownership by adverse possession to prove the presence of the essential elements of acquisitive prescription.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALES; DOUBLE SALES; OWNERSHIP SHALL PERTAIN TO THE PERSON WHO IN GOOD FAITH WAS FIRST IN POSSESSION IN THE ABSENCE OF RECORDING IN THE REGISTRY OF PROPERTY.** — In the instant case, the first sale of Eduarda Navera's share in the said lot to Arsenio Nares was made in a public instrument on May 14, 1947. The second sale of the same property was executed also in a public instrument in favor of Mariano Navera, who is the predecessor in interest of petitioner Genaro Navera, on June 26, 1948, or more than a year after the first sale. Since the records show that both sales

Supreme Court E-Library

were not recorded in the Registry of Property, the law clearly vests the ownership upon the person who in good faith was first in possession of the disputed lot. The possession mentioned in Article 1544 for determining who has better right when the same piece of land has been sold several times by the same vendor includes not only the material but also the symbolic possession, which is acquired by the execution of a public instrument. This means that after the sale of a realty by means of a public instrument, the vendor, who resells it to another, does not transmit anything to the second vendee, and if the latter, by virtue of this second sale, takes material possession of the thing, he does it as mere detainer, and it would be unjust to protect this detention against the rights of the thing lawfully acquired by the first vendee. In the case at bar, the prior sale of the land to respondent Arsenio Nares by means of a public instrument is clearly tantamount to a delivery of the land resulting in the material and symbolic possession thereof by the latter. Verily, factual evidence points to the prior actual possession by respondent Nares before he was evicted from the land by petitioners and their predecessors in 1957 when the latter entered the disputed property. No other evidence exists on record to show the contrary. Based on the foregoing, it is correct to conclude that the priority of possession stands good in favor of respondents. It is well-settled in our jurisprudence that *prior est in tempore, potior est in jure* (he who is first in time is preferred in right). Ownership should therefore be recognized in favor of the first vendee, respondent Arsenio Nares.

4. ID.; PRESCRIPTION; ACQUISITIVE PRESCRIPTION; NOT ESTABLISHED IN CASE AT BAR. — We are of the opinion that there is lack of sufficient proof to establish clearly and positively petitioner's claim of acquisitive prescription. In fact, We are more inclined to believe respondents' version that respondent Arsenio Nares was evicted from the property by petitioner sometime in 1957, thereby showing the latter's bad faith in acquiring the possession of the property until 1971 when the action against petitioner was filed. Thus, the ordinary acquisitive prescription of ten years cannot be considered in favor of petitioner in the absence of good faith. Neither is the petitioner entitled to extraordinary acquisitive prescription, in the absence of sufficient proof of compliance with the thirty-year requirement of possession in case of bad faith.

Supreme Court E-Library

5. ID.; POSSESSION; MUST BE IN THE CONCEPT OF AN OWNER, PUBLIC, PEACEFUL AND UNINTERRUPTED. — The law clearly states that "possession has to be in the concept of an owner, public, peaceful and uninterrupted" (Article 1118, Civil Code). The actuations of petitioners, however, show the contrary. A reading of the demand letter from respondents dated May 27, 1970, submitted in evidence by petitioners, shows that the dispute over Lot 1460 had been going on for a number of years among petitioners, respondents and their families. This goes to show that during the time when the petitioners bought the land in 1959 and the following years thereafter when the latter possessed the property, they have known or should have known of the rights and interests of their cousins, respondents herein, over the disputed land. Moreover, the tax declarations for the years 1951 and 1965 showed that the respondents Arsenio Nares and Felix Nares were the declared owners. In other words, petitioner's predecessors in interest, namely, Mariano Navera and the subsequent purchasers of the lot, had not bothered to declare the land in their own names for purposes of taxation during the time that they were allegedly in possession of the land. It was only in the year 1966 when petitioner Genaro Navera started to declare himself owner of the land for taxation purposes.

6. ID.; DONATIONS; DONATION *PROPTER NUPTIAS*, MUST BE RECORDED IN THE REGISTRY OF PROPERTY OR INSCRIBED IN THE ORIGINAL CERTIFICATE OF TITLE. — The respondent appellate court affirmed the findings of the lower court on this matter, as follows, to wit: "After a careful perusal and thorough review of the whole evidence on record, we cannot find any basis therein for upholding the claim of appellants, articulated in their appellants' brief. It is apropos to state that the donation *propter nuptias* made by Leocadio Navera sometime in October, 1916, should have been at least recorded in the registry of property or inscribed in the Original Certificate of Title or the donee shall have titled the property in his name. As the trial court correctly noted that the alleged donee Fausto Mustar is not a party to the case nor had he transferred the said donated property to the spouses Mariano Navera in a public instrument or conveyance. Nowhere in the evidence on record would show that the said donated property was ever transferred to Mariano Navera, father of defendant-appellant Genaro Navera." No important reasons exist to compel

Supreme Court E-Library

Us to ignore the findings of the respondent appellate court. Besides, the knowledge of private respondents concerning the alleged previous donation is immaterial. The facts are clear that the original certificate of title itself covers the whole of 26,995 square meters of the disputed Lot 1460 in the name of "Elena Navera, *et al.*", without any mention of any previous donation of a portion of the said lot to the alleged donee.

APPEARANCES OF COUNSEL

Madrid Law Office for petitioners.
Alfredo O. Pontejos for private respondents.

D E C I S I O N

MEDIALDEA, *J.*:

This is a petition for review on *certiorari* of the decision of the Court of Appeals in CA-G.R. No. 63926-R affirming *in toto* the decision of the Court of First Instance of Albay (now Regional Trial Court) in Civil Case No. 4359 entitled "*Arsenio Nares and Felix Nares vs. Genaro Navera and Emma Amador*," which declared the private respondents Arsenio Nares and Felix Nares owners of the land in dispute.

The antecedent facts of this case are as follows:

Leocadio Navera has five (5) children, namely: Elena, Mariano, Basilio, Eduarda and Felix, all surnamed Navera. Mariano Navera is the father of petitioner Genaro Navera. Elena Navera, on the other hand has three children by Antonio Nares. Two of them are respondent Arsenio Nares and Felix Nares. The other child, Dionisia is already deceased and has left children. Petitioner and respondents are therefore, first cousins.

Way back in 1916, Leocadio Navera donated to Fausto Mustar in a private instrument a certain property in consideration of the marriage of the former's son, Mariano Navera, to the daughter of Fausto Mustar by the name of Restituta Mustar. The said property donated is described as follows:

Supreme Court E-Library

"The land that I am giving to my compadres (Cablaye) is located in Caguiba, Camalig, Albay, Philippines, and the boundaries and area are the following: North, property of Angel Navera, and measures 98 meters on this side and the visible boundary is a row of Pasao; East, property of Josefa Moratalla and measures 150 meters on this side with row of Pasao and bani, on the South, property belong to me and measures 63 meters on this side and the visible mark is shoulder of the mountain: on the west, my own property and measures 108 meters on this side with row of Pasao with a dita tree." (p. 110, Records)

On July 19, 1927, Original Certificate of Title No. RO-154(NA) was issued in the name of "Elena Navera, *et al.,*" covering the land in dispute, namely Lot 1460, situated in the Municipality of Camalig, Albay, particularly described as follows:

"A parcel of land (Lot No. 1460 of the Cadastral Survey of Camalig), with all the improvements thereon; bounded on the SE, along lines 1-2, by Lot 1459; on the SW along lines 2-3-4-5-6-7-8, by creek; on the NE, along line 8-9, by Lot 1474; and on the E, along line 9-1, by Lot 1441, containing an area of TWENTY SIX THOUSAND NINE HUNDRED NINETY FIVE (26,995) square meters more or less; x x x." (pp. 30-31, Records)

Sometime in 1924, Elena Navera died.

On May 14, 1947, Eduarda Navera, by means of a public instrument, sold to her nephew, respondent Arsenio Nares, all of her share in Lot 1460, which is titled in the name of "Elena Navera, *et al.*". Eduarda Navera's share in the aforementioned lot is one-half (½) of the total area of Lot 1460. The deed of sale which the latter executed in favor of respondent Arsenio Nares particularly describes the lot subject of the sale, as follows:

"A portion from the tax No. 28081, of one (1) half belong to EDUARDA NAVERA; and the other one (1) half to own by the deceased Lina Navera, only is sold by this present deed of sale, the one to belong to Eduarda Navera. But the other half being owned by Lina Navera, is the very deceased mother of the buyer of this deed of absolute sale. Although the other half to belong to Lina Navera but the present administrator is also name[d] the present buyer. And by this reason, the whole lot is now under care of Arsenio Nares. The boundaries of the portion to belong to Eduarda Navera, to sell the

Supreme Court E-Library

said purchaser are: on the North by Mariano Navera; on the East by Roman Marga, on the South by Enrico Obligado and on the West by Felix Samson." (pp. 32-33, Records)

On June 26, 1948, Eduarda Navera sold for the second time a portion of Lot 1460 to Mariano Navera. The property sold is described as follows:

"A portion of 50 meters long, 59 meters wide, the length has a terminus consisting of stone set by the Bureau of Lands from the West and straight to the East, reaching the goal of a tree namely *Ditadita*, and from that point down the South reaching the point with the symbol of a Gomian tree and from Gomian for North Direction reaching Anonang with a dimension of 48 meters and from Anonang tree curving to the point of a goal set by the Bureau of Lands and from that point at ends North direction to the last is again a stone placed by the Bureau of Lands, 12 m. This portion is taken from land tax No. R-124. Title No. _____ and Lot No. _____. The declaration has the value of ₱280.00. The boundaries of the portion to be sold are: — North, by Igmedio Navera; on the east by Mariano Navera; on the south by Arsenio Nares, and on the west, by Januario Nolasco, Arsenio Nares had also same bought a portion from the whole lot." (p. 111, Records)

On January 30, 1953, respondent Arsenio Nares sold to Perpetua Dacillo a portion of Lot No. 4167 containing an area of five thousand seven hundred twenty six (5,726) square meters (p. 112, Records). Perpetua Dacillo thereafter donated the said property to Francisco Dacillo.

On August 13, 1955, Mariano Navera, sold to his brother-in-law, Serapio Mustar, the lot which he bought from Eduarda Navera, particularly described as follows:

"A certain parcel of land situated in the barrio of Tiniguiban, Caguiba, Camalig, Albay, Philippines, containing an area of (00-09-16) square meters more or less. Bounded on the North by Igmedio Navera. This property is declared for taxation purposes under Tax No. R-124. Visible boundaries consist of *mojon* and other trees. Assessed at ₱280.00." (pp. 105-106, Records)

On February 11, 1956, the foregoing deed of sale was supplemented by the following stipulation:

Supreme Court E-Library

"(b) As to the property under paragraph (2) thereof, the same pertains to Cadastral Lot No. 1460, containing an area of 1-99-69 square meters, more or less, (in the said document there was clerical error of the area, as previously stated in the total area of 00-09-16, which is hereto corrected as 1-90-71 square meters, as the total area sold)." (p. 107, Records)

On April 7, 1959, Serapio Mustar later sold to petitioner Genaro Navera Lot 1460 which he bought from the latter's father, Mariano Navera, containing an area of nineteen thousand nine hundred sixty nine (19,969) square meters more or less (p. 160, Records).

On September 3, 1971, Francisco Dacillo sold to petitioner Genaro Navera the land which the former received by way of donation from Perpetua Dacillo. The lot sold is specifically described as follows:

"A parcel of land (Lot No. 1460, Camalig, Cad. Survey), Albay, with all the improvements thereon. Bounded on the N., by Genaro Navera; on the E., by Roman Morga; on the S., by Cipriano Morga and on the W. by Heirs of Felix Samson x x x containing an area of seven thousand and twenty six hundred (7,026) square meters." (p. 101, Records)

All of the foregoing transfers of Lot 1460 were not annotated and inscribed in the Original Certificate of Title.

In their complaint dated March 14, 1971 filed with the then Court of First Instance of Albay (now Regional Trial Court), respondents Arsenio Nares and Felix Nares, alleged *inter alia*: that they are the absolute owners of the whole of Lot 1460 covered by Original Certificate of Title No. RO-154(NA), and are entitled to the possession of the same, that Lot 1460 is registered in the name of "Elena Navera, *et al.*," the "*et al.*" being Eduarda Navera; that the respondents acquired the above-described property by inheritance from their deceased mother Elena Navera; that a portion thereof which had been adjudicated to Eduarda Navera was later sold to respondent Arsenio Nares; that sometime in August, 1955, Mariano Navera, without any legal right whatsoever and under the pretense of ownership sold the said property to his brother-in-law Serapio Mustar,

Supreme Court E-Library

who in turn sold the same to Genaro Navera, son of Mariano. Plaintiffs, respondents herein, also claimed that all the foregoing sales were sham and manipulated transactions and that Mariano Navera knew fully well that he had no right to sell the property. Respondents admitted however, that they sold a portion of the property containing 5,726 square meters to Perpetua Dacillo, so that the remaining portion still belongs to them. They further contended that petitioner Genaro Navera entered the land after the sale to him by Mustar and took possession of the same and acquired the produce thereof since 1957 up to the present time; and that respondents have exerted earnest efforts toward a compromise but petitioners instead challenged them to go to court.

Petitioners Genaro Navera and Emma Amador filed their answer with counterclaim, denying all the respondents' claims, and alleging *inter alia*: that Leocadio Navera is the father of five children, namely, Elena, Mariano, Eduarda, Basilio and Felix; that after deducting 12,415 square meters which Leocadio Navera donated to Fausto Mustar in 1916, the remaining area of Lot 1460 was divided in equal shares among Elena, Mariano and Eduarda, to the extent of 4,860 square meters each; that Basilio and Felix were given their shares in other parcels of land. Petitioners also submitted that the "*et al.*" appearing in the title of the property refers to Fausto Mustar-12,415 square meters, Eduarda Navera-4,860 square meters, Mariano Navera-4,860 square meters and Elena Navera-4,860 square meters; that Eduarda Navera sold 2,695 square meters of her share to Mariano Navera while the remaining 2,166 square meters of her share was sold to Arsenio Nares; that Arsenio's property totalled 7,026 sq. meters which he later sold to Perpetua Dacillo. Petitioners further contended that they are presently in possession of Lot 1460 and their possession tacked to that of their predecessor-in-interest as early as 1916; that the complaint states no cause of action and that if the respondents had any, the same has long prescribed.

During the pre-trial on December 14, 1973, the parties agreed on the following matters: identity of the land, the identity of the parties, that 5,726 sq. meters of the said Lot 1460 had

Supreme Court E-Library

already been sold to Perpetua Dacillo and; that the defendants are in possession of the land in question.

On February 28, 1978, the trial court rendered a decision, the dispositive portion of which states:

"PREMISES CONSIDERED, judgment is hereby rendered:

1. Declaring the plaintiff[s] owner[s] of the lot described in the Original Certificate of Title RO-15480, except 5,726 square meters which rightfully belongs to defendant Genaro Navera.

"SO ORDERED." (p. 47, *Rollo*)

Not satisfied with the decision of the trial court, the petitioner appealed to the Court of Appeals. On December 16,1980, the respondent appellate court rendered judgment affirming *in toto* the decision of the trial court.

Hence, the instant petition was filed, praying for a reversal of the above-mentioned decision, with the petitioner assigning the following errors:

"1. That the Honorable Court of Appeals failed to appreciate acquisitive prescription in favor of defendants (now petitioners). (p 10, *Rollo*)

"2. That the Honorable Lower Court failed to apply the rule of law that actual knowledge is equivalent to, if not serve the purpose of registration. (p. 12, *Rollo*)

"3. That the Honorable Court of Appeals erred in finding defendants-appellants (now petitioners) to be in bad faith instead of the plaintiff-appellees (now private respondents)." (p. 13, *Rollo*)

In their first assigned error, petitioners-spouses Genaro Navera and Emma Amador allege that the evidence on record, particularly Exhibit 12 and 12-A, clearly show their possession of the disputed property, the whole of Lot 1460, for more than forty-six (46) years which is tantamount to their ownership of the same by prescription, be it ordinary or extraordinary prescription; that respondents Arsenio Nares and Felix Nares should not have been declared owners of Lot 1460 since they have lost whatever

Supreme Court E-Library

rights they have on the land due to the possession thereof by petitioners; and that the sale by Eduarda Navera of her property to Arsenio Nares was not recorded or annotated in the title just like the sale by Eduardo Navera of the same lot to Mariano Navera.

As found by the trial court and respondent appellate court, the property in dispute, namely, the whole of Lot 1460 is titled in the name of "Elena Navera, *et al.*," the phrase "*et al.*" referring only to Eduarda, sister of Elena since the other brothers of Elena and Eduarda namely, Mariano, Basilio and Felix had received their shares from the other properties of their father Leocadio Navera. These factual findings are conclusive upon Us. Thus, when Elena Navera died sometime in 1924, her compulsory heirs including respondents Arsenio Nares and Felix Nares acquired Elena's shares in Lot 1460 by inheritance, which is one-half of Lot 1460. As to the other half of Lot 1460 owned by Eduarda Navera, the latter sold the same to two vendees, one in favor of respondent Arsenio Nares and the other in favor of Mariano Navera, petitioner's predecessor-in-interest.

On this matter of double sale, the appellate court upheld the findings of the trial court, as follows, to wit:

"As correctly noted by the trial court, all the transfers or conveyances are not inscribed in the Original Certificate of Title No. RO-15480(NA) ('Exhibit A'). It would not be amiss to state that the sa[l]e of Eduarda Navera to Arsenio Nares, and the sale of Eduarda Navera to Mariano Navera, which as above-mentioned, the property referred to in both sales is the very same property covered by reconstituted title — Exhibit A. The sale of Eduarda Navera to appellee Arsenio Nares covered all her portion to the property, thus, she could not possibly sell on June 26, 1948, another portion of the same property to Mariano Navera. Thus, the portion referred to in the sale to Mariano Navera by Eduarda Navera may not be validly transferred by Mariano Navera to Serapio Mustar. It likewise follow that Serapio Mustar may not effectively convey the same to Genaro Navera. x x x x x x x x x. It is irremissible to state that the alleged conveyance made by Serapio Mustar in favor of appellant Genaro Navera have no legal effect whatsoever, for the simple reason that Serapio Mustar could not properly convey the portion referred to

Supreme Court E-Library

in the sale of June 26, 1948, by Eduarda Navera in favor of Mariano Navera. In the first place, Eduarda Navera has no existing right to convey another portion of the property because she had already sold all her portion to appellee Arsenio Nares. Thus at the time Eduarda Navera conveyed a portion of the property which she already conveyed to appellee Arsenio Nares, she has no right on the property and the power to dispose it. It clearly appears, therefore, that Mariano Navera never acquired that portion subject of the sale on June 26,1948. Having acquired that portion of the property subject of the sale on June 26, 1948 from Mariano Navera, Serapio Mustar has likewise no existing right and power to dispose of that portion of the property to appellant Genaro Navera.

"Contrary to the appellants' claim that they are possessors in good faith, Article 526 of the New Civil Code provides that a possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it and a possessor in bad faith is one who possesses in any case contrary to the foregoing. And our Supreme Court said "every possessor in good faith becomes a possessor in bad faith from the moment he becomes aware that what he believed to be true is not so." His possession is legally interrupted when he is summoned to trial according to Article 1123 of the New Civil Code. (*Tacas v. Tabon,* 53 Phil. 356)" (pp. 25-26, *Rollo*).

We agree with the aforequoted findings and conclusions of the lower court which were affirmed on appeal by the Court of Appeals. The conclusions and findings of facts by the trial court are entitled to great weight and will not be disturbed on appeal unless for strong and cogent reasons because the trial court is in a better position to examine real evidence as well as to observe the demeanor of witnesses while testifying on the case. (*Macua vs. Intermediate Appellate Court*, No. L-70810, October 26, 1987, 155 SCRA 29).

Clearly applicable herein is Article 1544 of the Civil Code which provides:

"If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Supreme Court E-Library

"Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

"*Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession*; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith." (Italics supplied)

In the instant case, the first sale of Eduarda Navera's share in the said lot to Arsenio Nares was made in a public instrument on May 14, 1947. The second sale of the same property was executed also in a public instrument in favor of Mariano Navera, who is the predecessor in interest of petitioner Genaro Navera, on June 26, 1948, or more than a year after the first sale. Since the records show that both sales were not recorded in the Registry of Property, the law clearly vests the ownership upon the person who in good faith was first in possession of the disputed lot.

The possession mentioned in Article 1544 for determining who has better right when the same piece of land has been sold several times by the same vendor includes not only the material but also the symbolic possession, which is acquired by the execution of a public instrument. This means that after the sale of a realty by means of a public instrument, the vendor, who resells it to another, does not transmit anything to the second vendee, and if the latter, by virtue of this second sale, takes material possession of the thing, he does it as mere detainer, and it would be unjust to protect this detention against the rights of the thing lawfully acquired by the first vendee (*Quimson vs. Rosete*, 87 Phil. 159; *Sanchez vs. Ramos*, 40 Phil. 614; *Florendo vs. Foz*, 20 Phil. 388). In the case at bar, the prior sale of the land to respondent Arsenio Nares by means of a public instrument is clearly tantamount to a delivery of the land resulting in the material and symbolic possession thereof by the latter. Verily, factual evidence points to the prior actual possession by respondent Nares before he was evicted from the land by petitioners and their predecessors in 1957 when the latter entered the disputed property. No other evidence exists on record to show the contrary.

Based on the foregoing, it is correct to conclude that the priority of possession stands good in favor of respondents. It is

Supreme Court E-Library

well-settled in our jurisprudence that *prior est in tempore, potior est in jure* (he who is first in time is preferred in right). Ownership should therefore be recognized in favor of the first vendee, respondent Arsenio Nares.

Petitioners further submit that they have been in possession of the whole lot for more than 46 years, that this can be gleaned from the letter sent by respondent Nares, wherein the latter admitted that it was the petitioner Navera who continuously gathered the produce of the land for 46 years; that such possession for a considerable length of time entitled them to ownership by prescription whether ordinary or extraordinary.

This contention is devoid of merit. Prescription as a defense, must be expressly relied upon in the pleadings. It cannot be availed of, unless it is specially pleaded in the answer; and it must be proved or established with the same degree of certainty as any essential allegation in the civil action (*Hodges vs. Salas*, 63 Phil. 567; *Corporacion de PP. Augustinus Recolectos vs. Crisostomo*, 32 Phil. 427). In the instant case, petitioners, who were the defendants in the lower court, did not claim acquisitive prescription in their answer, and even if they did, it cannot be given judicial sanction on mere allegations. The law requires one who asserts ownership by adverse possession to prove the presence of the essential elements of acquisitive prescription (*Morales vs. CFI, et al.*, No. L-52278, May 29, 1980, 97 SCRA 872).

After a careful examination of the records, We are of the opinion that there is lack of sufficient proof to establish clearly and positively petitioner's claim of acquisitive prescription. In fact, We are more inclined to believe respondents' version that respondent Arsenio Nares was evicted from the property by petitioner sometime in 1957, thereby showing the latter's bad faith in acquiring the possession of the property until 1971 when the action against petitioner was filed. Thus, the ordinary acquisitive prescription of ten years cannot be considered in favor of petitioner in the absence of good faith. Neither is the petitioner entitled to extraordinary acquisitive prescription, in

Supreme Court E-Library

the absence of sufficient proof of compliance with the thirty-year requirement of possession in case of bad faith.

Moreover, the law clearly states that "possession has to be in the concept of an owner, public, peaceful and uninterrupted" (Article 1118, Civil Code). The actuations of petitioners, however, show the contrary. A reading of the demand letter from respondents dated May 27, 1970, submitted in evidence by petitioners, shows that the dispute over Lot 1460 had been going on for a number of years among petitioners, respondents and their families. This goes to show that during the time when the petitioners bought the land in 1959 and the following years thereafter when the latter possessed the property, they have known or should have known of the rights and interests of their cousins, respondents herein, over the disputed land. Moreover, the tax declarations for the years 1951 and 1965 showed that the respondents Arsenio Nares and Felix Nares were the declared owners (p. 34 and 113, Records). In other words, petitioner's predecessors in interest, namely, Mariano Navera and the subsequent purchasers of the lot, had not bothered to declare the land in their own names for purposes of taxation during the time that they were allegedly in possession of the land. It was only in the year 1966 when petitioner Genaro Navera started to declare himself owner of the land for taxation purposes (p. 126, Records).

In their second assignment of error, petitioners contend that private respondents are bound by their knowledge of the previous donation *propter nuptias* by their ancestor, Leocadio Navera in favor of Fausto Mustar. This contention has no merit.

The respondent appellate court affirmed the findings of the lower court on this matter, as follows, to wit:

"After a careful perusal and thorough review of the whole evidence on record, we cannot find any basis therein for upholding the claim of appellants, articulated in their appellants' brief. It is apropos to state that the donation *propter nuptias* made by Leocadio Navera sometime in October, 1916, should have been et least recorded in the registry of property or inscribed in the Original Certificate of Title or the donee shall have titled the property in his name. As the

Supreme Court E-Library

trial court correctly noted that the alleged donee Fausto Mustar is not a party to the case nor had he transferred the said donated property to the spouses Mariano Navera in a public instrument or conveyance. Nowhere in the evidence on record would show that the said donated property was ever transferred to Mariano Navera, father of defendant-appellant Genaro Navera." (p. 24, *Rollo*)

No important reasons exist to compel Us to ignore the findings of the respondent appellate court. Besides, the knowledge of private respondents concerning the alleged previous donation is immaterial. The facts are clear that the original certificate of title itself covers the whole of 26,995 square meters of the disputed Lot 1460 in the name of "Elena Navera, *et al.*,"without any mention of any previous donation of a portion of the said lot to the alleged donee.

Petitioners' third assigned error was already treated and resolved in the foregoing discussions.

ACCORDINGLY, the petition is DENIED but the decision of the Court of Appeals dated December 16, 1980 is hereby MODIFIED to the effect that as against the petitioners Genaro Navera and Emma Amador, the respondents Arsenio Nares and Felix Nares are declared the rightful owners of the disputed Lot 1460, except with respect to 5,726 square meters thereof which belongs to petitioner Genaro Navera, without prejudice however, to whatever rights and interests that the other compulsory heirs of Elena Navera may have in the one-half portion of Lot 1460. The respective rights of respondents to Lot 1460 as between themselves is a matter outside of this controversy and is therefore, beyond the jurisdiction of this Court to pass upon.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and *Griño-Aquino, JJ.,* concur.