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THIRD DIVISION

[G.R. No. 142546. August 9, 2001]

HEIRS OF ANASTACIO FABELA, namely; Teodula Fabela Paguidopon, Ricardo Fabela, Irenita Fabela Zea(d), Carolina Fabela Arazo Donglas, and Ampiloquio Fabela, *petitioners, vs.* **HON. COURT OF APPEALS, HEIRS OF ROQUE NERI, namely: Roque Neri, Jr., Filomeno, Sherlina, Emeterio, Antonio, Nelcar and Claudia, all surnamed Neri,** *respondents.*

SYNOPSIS

Carmelino Neri, as vendee-a-retro, was entrusted with the possession of a parcel of land for a period of fourteen (14) years from the date of the instrument. Upon the expiration of said period, possession of the property was to be restored to Simeona Balhon and her children (heirs of Anastacio Fabela) without need of "redemption." In 1977 or 1978, Barrio Abacan road was constructed across the subject land, which divided it into two separate lots known as Lot 868 and 870. Roque Neri, Sr. declared these two parcels of land in his name with the Bureau of Lands and the Assessor's office. Sometime in 1980, the Philippine Veterans Industrial Development Corporation (PHIVIDEC), negotiated with Roque Neri, Sr. for the purchase of Lot 870, however, the heirs of Anastacio Fabela, protested. As a consequence, Roque Neri, Sr. executed a waiver of rights stating that the 8,000 sq. meter portion of Lot 870 was erroneously included in his name, thus plaintiff heirs of Anastacio Fabela eventually received the proceeds of the sale. Thereafter, the late Roque Neri, Sr. continued to ignore plaintiffs' demand for the return of Lot 868. The heirs of Anastacio Fabela filed a complaint for reconveyance and damages against the heirs of Roque Neri, Sr., involving said lot. The case was submitted for decision on the basis of plaintiffs' evidence since all the defendants were declared in default. After trial and hearing *ex-parte,* the trial court rendered judgment in favor of plaintiffs. In finding that the property belonged to the heirs of Anastacio Fabela, the trial court concluded that in the *"Escritura de Transaccion,"* Carmelino Neri was obliged to restore the subject property in or about 1938 to the heirs of

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Anastacio Fabela. Defendants heirs of Roque Neri, Sr. filed a motion to set aside orders of default and judgment which the trial court denied. The Heirs of Roque Neri, Sr. appealed to the respondent Court of Appeals which rendered its assailed decision reversing the trial court's judgment by default and dismissed the complaint. It sustained the trial court's declaration of default against appellants Heirs of Roque Neri, Sr. but found that the judgment of default was contrary to the evidence or the law. It concluded that petitioners had not successfully adduced the required preponderance of evidence on their claim of absolute ownership over Lot 868. Appellees' motion for reconsideration was denied. Hence, this petition filed by the heirs of Anastacio Fabela.

According to the Supreme Court, the judgment of default against defendants who have not appeared or filed their answers does not imply a waiver of all their rights, except their right to be heard and to present evidence to support their allegations. Since the trial court rendered a judgment of default against private respondents, the latter took the appropriate remedy, which is an ordinary appeal. Thus, notwithstanding the respondent court's complete agreement with the trial court's findings that all the respondents were properly declared in default, it found that the judgment by default was contrary to the evidence or the law and thus reversed the trial court's decision. In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence and need not rely upon the weakness of the evidence of his opponent. When the record did not show that the land, which was the subject matter of the action for recovery of ownership, had been exactly determined. such action could not prosper. Hence, petitioners' ownership rights in the land claimed were not satisfactorily and conclusively proven during the trial. The petition was denied and the decision of the respondent Court of Appeals was affirmed.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT BY DEFAULT; FAVORABLE RELIEF CAN ONLY BE GRANTED AFTER THE COURT HAS ASCERTAINED THAT THE EVIDENCE PRESENTED AND THE FACTS PROVEN WARRANT GRANT OF THE SAME.—** Section 1, Rule 18 of the old Rules of Court which is the law applicable

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in the instant case provides: "Judgment by default — If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon, the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to a counterclaim, cross-claim, or third-party complaint within the period provided in this rule." Favorable relief can be granted only after the court has ascertained that the evidence offered and the facts proven by the presenting party, petitioners in this case, warrant the grant of the same. In this sense, the law gives the defaulting parties some measure of protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint. The judgment of default against defendants who have not appeared or filed their answers does not imply a waiver of all their rights, except their right to be heard and to present evidence to support their allegations. Otherwise, it would be meaningless to require presentation of evidence if every time the other party is declared in default, a decision would automatically be rendered in favor of the non- defaulting party and exactly according to the tenor of his prayer.

2. **ID.; ID.; ID.; ORDINARY APPEAL, AS A REMEDY; PROPER; CASE AT BAR.—** Since the trial court rendered a judgment of default against private respondents, the latter took the appropriate remedy which is an ordinary appeal under Section 2 Rule 41, par (3) of the Rules of Court providing in part as follow: "A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default had been presented by him in accordance with Rule 38." Thus, notwithstanding the respondent court's complete agreement with the trial court's findings that all the respondents were properly declared in default, it found that the judgment by default was contrary to the evidence or the law and thus reversed the trial court decision.

3. **ID.; ID.; APPEAL TO THE SUPREME COURT; GENERALLY LIMITED ONLY TO QUESTIONS OF LAW; DISAGREEMENT IN THE ACTUAL FINDINGS OF THE REGIONAL TRIAL COURT AND THE COURT OF APPEALS, AS AN EXCEPTION; INDEPENDENT**

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FINDINGS OF FACT BY THE SUPREME COURT IS NOT A MATTER OF COURSE; RATIONALE.— These arguments essentially raise factual issues which normally are not reviewable by this Court in a petition under Rule 45 which is generally limited only to question of law. While certain exceptions to this rule are recognized such as when the factual findings of the respondent Court of Appeals are at variance with those of the Regional Trial Court, the Court does not, in all cases of disagreement of facts between these two courts, automatically delve into the record to determine the facts for itself. Admittedly, there have been instances when this Court made independent findings of fact on the points that the trial court and the appellate court disagreed but we did not do so as a matter of course. When the dispute between the two courts are merely on probative value, we limit our review of the evidence ascertaining if the findings of the Court of Appeals are supported by the record. And, so long as the findings of the said court are consistent with, or not palpably contrary to, the evidence on record, we decline to make a review on the probative value of the evidence. In the instant case, We find no cogent reason to disturb the factual findings of the respondent court and its conclusion that petitioners failed to establish their case by preponderance of evidence.

4. **ID.; ID.; ACTION FOR RECOVERY OF OWNERSHIP; CLAIMANT MUST PROVE NOT ONLY HIS OWNERSHIP OF THE PROPERTY BUT ALSO THE IDENTITY THEREOF; NOT PRESENT IN CASE AT BAR.—** The invariable applicable rule is to the effect that in order to maintain an action for recovery of ownership, the person who claims that he has a better right to the property must prove not only his ownership of the property claimed but also the identity thereof. We note, however, that nowhere in the trial court's narration of facts were the boundaries of the parcel of land indicated with particularity, nor the parcel of land referring to as lot 868. What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits. x x x In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not upon the weakness of that of his opponent. When the record does not show that the land which is the subject matter of the action for recovery of ownership has been

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exactly determined, such action cannot prosper, inasmuch as the petitioners' ownership rights in the land claimed do not appear satisfactorily and conclusively proven at the trial.

5. **ID.; ID.; ID.; WHEN CLAIMANT MAY USE TAX DECLARATION AS EVIDENCE OF THE NATURE OF HIS POSSESSION OF THE PROPERTY CLAIMED; CASE AT BAR.**— Although a tax declaration is not considered as conclusive proof of ownership the same is admissible in evidence to show the nature of the possession of the claimant of the property for which taxes have been paid. We accordingly find well-taken the respondent court's conclusion as follows: "Thus, where it was shown that plaintiff has never paid the land tax, while the defendant has faithfully done so for many years, there being no explanation offered, it was held that such payment of taxes should be taken into consideration in favor of defendant. Being the exclusive possessors of the subject property who have declared the same for tax purposes through the years, defendants-appellants are entitled to such favorable presumption of ownership which so far had not been overturned by plaintiffs-appellees."

APPEARANCES OF COUNSEL

Llego & Llego Law Office for petitioners.

Dysangco Neri-Dysangco & Fernandez Law Offices for private respondents.

D E C I S I O N

GONZAGA-REYES, *J.*:

Petitioners, heirs of Anastacio Fabela, seek to annul the (1) decision of the respondent Court of Appeals dated June 17, 1999[1] which reversed and set aside the appealed judgment by default of the Regional Trial Court of Misamis Oriental, Branch 18, Cagayan De Oro City[2] in Civil Case No. 10459 declaring

[1] *Rollo*, pp. 24-29; CA G.R.-CV NO. 23739; Penned by Justice Martin S. Villarama, Jr., concurred in by Associate Justices Angelina Sandoval-Gutierrez (now Supreme Court Justice) and Romeo A. Brawner.

[2] CA *Rollo*, pp. 47-50; Per Judge Senen C. Peñaranda.

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petitioners as the rightful owners of subject lot 868 of the Pls. 293 of Balacanas, Nabacaan, Villanueva, Misamis Oriental, and (2) its resolution dated February 18,[3] 2000 denying petitioners' motion for reconsideration.

Sometime in December 1985, the heirs of Anastacio Fabela filed a complaint for reconveyance and damages against the heirs of Roque Neri, Sr., involving the subject lot 868, alleging among others, that plaintiffs' late grandfather, Anastacio Fabela, left two parcels of land in Nabacaan, Misamis Oriental which were later identified as lot 868 with an area of 48,121 sq. meters and lot 870 consisting of 15,658 sq. meters which originally formed part of their grandfather's big tract of land; that earlier in 1924, the parcel of land became the subject of litigation (Civil Case No. 2891) in the then Court of First Instance of Misamis Oriental between Carmelino Neri as plaintiff and Simeona Balhon and children heirs of Anastacio Fabela as defendants and in connection therewith, the parties entered into an agreement embodied in an *"Escritura de transaccion,"* a notarized document in a Visayan dialect, which provided that Carmelino Neri, as vendee-a-retro had been entrusted with the possession of a parcel of land for a period of fourteen (14) years from the date of the instrument which was May 10, 1924 and upon the expiration of said period, Carmelino Neri was to restore the possession of the property to Simeona Balhon and her children-heirs of Anastacio Fabela, without need of "redemption"; that sometime in 1977 or 1978, the Bureau of Lands conducted a cadastral survey on this land when a road (Barrio Abacan road) was constructed across the land dividing it into two separate lots which are now known as lot 868 and 870; that Roque Neri, Sr. declared these two parcels of land in his name with the Bureau of Lands and the Assessor's Office; that sometime in 1980, the Philippine Veterans Industrial Development Corporation (PHIVIDEC), a government entity buying substantially all real properties at Nabacaan, Villanueva, Misamis Oriental, negotiated with Roque Neri Sr. for the purchase of lot 870, however, the heirs of Anastacio Fabela, protested and consequently, Roque Neri Sr. executed a waiver of rights over

[3] *Rollo*, p. 33.

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a portion of lot 870 stating that the 8,000 sq. meter portion of lot 870 was erroneously included in his name, thus plaintiff heirs of Anastacio Fabela eventually received the proceeds of the sale; that with respect to lot 868, which was the lot in controversy, the late Roque Neri, Sr. continued to ignore plaintiffs' demand for the return of the said lot. Plaintiffs prayed for judgment declaring (1) the plan of lot 868, Pls-293 and the tax declarations issued subsequent to and by virtue of aforesaid plan as null and void, (2) the heirs of Anastacio Fabela as the lawful owners of lot 868, and (3) the estate of Roque Neri, Sr. liable for payment of damages.

Upon motion of plaintiffs heirs of Anastacio Fabela, defendants Sherlinda Neri Jamisolamin, Emeterio Neri and Antonio Neri, were declared in default on April 14, 1986, Filomena Neri on September 26, 1986 while Nelchar and Claudia Neri on February 9, 1989, for their failure to file answer despite receipt of summons and copy of the complaint. On the other hand, defendant Roque B. Neri, Jr. had filed his answer with Counterclaim, but was likewise declared in default for failure to appear at pre-trial on August 12, 1988.

The case was submitted for decision on the basis of plaintiffs' evidence since all the defendants were declared in default. After trial and hearing *ex-parte*, the trial court rendered judgment in favor of plaintiffs, the dispositive portion reads:[4]

"WHEREFORE, in view of the foregoing, judgment is rendered in favor of the heirs of the late Anastacio Fabela including those named in the Complaint as plaintiffs, as co-owners of lot 868, Pls-293 subject of the complaint and as indicated in the plan (Exhibit D), as such entitled to the full enjoyment and possession thereof. All other prayers or claims in the complaint are denied for lack of merit."

In finding that the property belonged to the heirs of Anastacio Fabela, the trial court concluded that in the "*Escritura de Transaccion*," Carmelino Neri was obliged to restore the subject property in or about 1938 to the heirs of Anastacio Fabela; thus the fulfillment of that prestation of Carmelino Neri was presumed under Section 5, par (ii), Rule 131, Rules of Court which

[4] CA *Rollo*, p. 50.

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enumerates among the disputable presumptions "that a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed it to him when such presumption is necessary to perfect the title of such person or his successor-in interest." It thus found that the Fabela heirs have been in possession of lot 868 since 1938 up to the present and as such were entitled to the full enjoyment and possession as owners thereof.

On July 24, 1989, defendants heirs of Roque Neri Sr. filed a motion to set aside orders of default and judgment which the trial court denied in an Order dated August 22, 1989, on the grounds that the motion had been filed out of time (after judgment) and that even if such motion would be treated as a motion to set aside judgment/new trial under Section 1, Rule 37, *Rules of Court*, defendants' negligence was not excusable, much less a mistake.[5]

Heirs of Roque Neri Sr. appealed to the respondent Court of Appeals. Considering, however, that the original records of the case from the trial court had been lost or misplaced, the respondent court, pursuant to Rule 7 of the Revised Internal Rules of the Court of Appeals (RIRCA), set the case for preliminary conference on December 17, 1998, which was reset to January 26, 1999, and the parties were informed of the loss of the original records of the case. Counsel for defendants-appellants heirs of Roque Neri Sr. manifested her clients' willingness to submit the case for decision, even without the original records and asked for thirty days to file memorandum, to which manifestation counsel for plaintiffs-appellees heirs of Fabela interposed no objection. The respondent court granted appellants' prayer and gave plaintiffs-appellees twenty days to file their counter memorandum and appellants ten (10) days to file reply memorandum, after which the case was submitted for decision.[6]

On June 17, 1999, the respondent Court of Appeals rendered its assailed decision reversing the trial court's judgment by default and dismissed the complaint. It sustained the trial court's

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[5] CA *Rollo*, p. 53.

[6] CA *Rollo*, p. 135.

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declaration of default against appellants heirs of Roque Neri, Sr. but found that the judgment of default was contrary to the evidence or the law. It concluded that petitioners had not successfully adduced the required preponderance of evidence on their claim of absolute ownership over lot 868, the court stated:[7]

"Art. 434 of the *Civil Code* states that "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claims. The possessor of the property has the presumption of title in his favor. Hence, any person who claims that he has a better right to the property, as owner thereof, must prove (1) that he has a better title than the defendant to the property, and (2) the identity of the property. The identity of the land sought to be recovered may be established through the survey plan of the property. Ownership may be proved by any evidence admissible in law, such as titles and certificates, long possession and tax declarations or receipts.

Appellees claimed that Lots 868 and 870 are owned by their grandfather Anastacio Fabela. The records of the Bureau of Lands, as well as the survey plan presented in court, however, indicate Roque Neri, Sr. as the registered claimant of both lots. The original of the *'Escritura de Transaccion'* on which appellees relied heavily, was not presented in court. Its probative value, however, remains doubtful since said document does not really prove appellees' absolute ownership of the subject property, nor was Lot 868 explicitly referred to as the property being entrusted to the vendee-a-retro (Carmelino Neri).

On the other hand, the waiver of rights executed in 1980 by Roque Neri, Sr. appears to refer only to a portion of Lot 870 (the parcel of land sold to PHIVIDEC), and not to Lot 868. The old tax declaration presented by appellees and which supposedly covered the two (2) lots did not specify the lot number, nor was there any evidence presented that the original parcel of land actually consisted of eighteen (18) hectares. Their allegation that both lots have already been partitioned among the heirs of Anastacio Fabela was not substantiated by any document or writing evidencing such extra-judicial partition. The fourteen (14) years of the agreed temporary possession of the land by the defendants-appellants had lapsed a long time ago, and this was prior to the 1971 public survey conducted by the Bureau of Lands. It appears appellees did not exert diligent efforts to regain possession or resume paying taxes

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[7] *Rollo*, pp. 28-29.

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on the land thereafter, prior to the purchase of Lot 870 by PHIVIDEC. The fact that appellees were the ones paid by PHIVIDEC for the portion of Lot 870 does not automatically lead to the conclusion that they also absolutely own Lot 868. Most significant yet, is appellees' failure to adequately explain why they had not at all registered their claim over the property with the Bureau of Lands during and after the public survey in the municipality.

Roque Neri, Sr., appellants' predecessor-in-interest, meanwhile registered his claim or interest on the land and declared it for taxation purposes. Appellees' claim of possession was through the land's caretaker and administrator, Delfin Sia, but at the same time admitting that appellants similarly benefit from the fruits of the land. Regarding tax declarations, it has been held that while tax declarations and receipts are not conclusive evidence of ownership, yet, when coupled with proof of actual possession, they are strong evidence of ownership. Thus, where it was shown that plaintiff has never paid the land tax, while the defendant has faithfully done so for many years, there being no explanation offered, it was held that such payment of taxes should be taken into consideration in favor of defendant. Being the exclusive possessors of the subject property who have declared the same for tax purposes through the years, defendants-appellants are entitled to such favorable presumption of ownership which so far had not been overturned by plaintiffs-appellees.

The foregoing considered, it is clear that plaintiffs had not successfully proved by the required preponderance of evidence their claim of absolute ownership of Lot 868. It is an invariable rule laid down in numerous decisions, that a person who claims the ownership of property is in duty bound to clearly identify the land claimed, in accordance with the titles on which he founds (sic) his right to ownership, and he shall not be permitted to rely upon the defects in defendant's title. Failure to prove his right of ownership will bar an action to recover the property; his right to recover must be founded on positive title or right, and not merely on negative ones, such as the lack or insufficiency of title on the part of the defendant. The possessor has a presumption of title, and unless the plaintiff proves he has a better right, he cannot recover the property from the defendant."

Appellees' motion for reconsideration was denied in a resolution dated February 18, 2000.

Hence this petition for review on *certiorari* filed by the heirs of Anastacio Fabela alleging that the respondent court (1) departed

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from the stringent jurisprudence on default and appeals filed out of time and (2) erred in the appreciation of the findings of fact of the lower court.

Anent the first assigned error, petitioners fault the respondent court for reversing the decision of the trial court despite its complete agreement with the findings of the trial court that respondents were properly declared in default. They contend that the reasons cited by private respondents for their failure to file answer and to appear at the pre-trial were not meritorious and that private respondents' affidavit attached to the motion for reconsideration did not declare how Roque Neri Sr. acquired lot 868.

We are not persuaded.

Section 1, Rule 18[8] of the old Rules of Court which is the law applicable in the instant case provides:

"Judgment by default- If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon, the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to a counterclaim, cross-claim, or third-party complaint within the period provided in this rule."

Favorable relief can be granted only after the court has ascertained that the evidence offered and the facts proven by the presenting party, petitioners in this case, warrant the grant of the same.[9] In this sense, the law gives the defaulting parties some measure of

[8] Now Section 3 Rule 9 of the 1997 Rules of Civil Procedure, to wit:

"Sec.3 Default; declaration of- If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court."

[9] *Pascua vs. Florendo*, 136 SCRA 208.

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protection because plaintiffs, despite the default of defendants, are still required to substantiate their allegations in the complaint. The judgment of default against defendants who have not appeared or filed their answers does not imply a waiver of all their rights, except their right to be heard and to present evidence to support their allegations.[10] Otherwise, it would be meaningless to require presentation of evidence if every time the other party is declared in default, a decision would automatically be rendered in favor of the non- defaulting party and exactly according to the tenor of his prayer.[11] Since the trial court rendered a judgment of default against private respondents, the latter took the appropriate remedy which is an ordinary appeal under Section 2 Rule 41, par (3)[12] of the Rules of Court providing in part as follow:

"A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the

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[10] *Vlason Enterprises Corporation vs. CA*, 310 SCRA 26.

[11] *Pascua vs. Florendo, supra.*

[12] As amended by Section 1 Rule 41 of the 1997 Rules of Civil Procedure.

"SECTION 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;
(b) An order denying a petition for relief or any similar motion seeking relief from judgment;
(c) An interlocutory order;
(d) An order disallowing or dismissing an appeal;
(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
(f) An order of execution;
(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65."

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law, even if no petition for relief to set aside the order of default had been presented by him in accordance with Rule 38."

Thus, notwithstanding the respondent court's complete agreement with the trial court's findings that all the respondents were properly declared in default, it found that the judgment by default was contrary to the evidence or the law and thus reversed the trial court decision.

Anent the second error, petitioners claim that the respondent court erred in concluding that petitioners' predecessor Roque Neri, Sr. appeared as the registered claimant of lot 868 and 870 which was contrary to the findings of the trial court that the "plan showing lot 868 (Exh. D-2) and lot 870 (Exh. D-1) although appearing to have been approved by Jose F. Gatus, OIC, Regional Director, on July 17, 1986 does not on its face indicate for whom it had been approved"; that Neri Sr. failed to produce evidence of ownership on how he acquired the subject Lot No. 868. They further claim that the execution in their favor by Roque Neri Sr. of a waiver of right over lot 870 where the former acknowledged the erroneous inclusion of the lot in his name was a strong admission against interest on Neri's part. They also contend that the respondent court erred in doubting the probative value of the *"Escritura de Transaccion"* only for the reason that the original was not presented in court.

These arguments essentially raise factual issues which normally are not reviewable by this Court in a petition under Rule 45 which is generally limited only to question of law.[13] While certain exceptions to this rule are recognized such as when the factual findings of the respondent Court of Appeals are at variance with those of the Regional Trial Court, the Court does not, in all cases of disagreement of facts between these two courts, automatically delve into the record to determine the facts for itself.[14] Admittedly, there have been instances when this Court made independent findings of fact on the points that the trial court and the appellate

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[13] *Deiparine vs. CA*, 299 SCRA 668.

[14] *Tan vs. Lim*, 296 SCRA 455 citing *Uniland Resources vs. DBP*, 200 SCRA 751.

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court disagreed but we did not do so as a matter of course. When the dispute between the two courts are merely on probative value, we limit our review of the evidence ascertaining if the findings of the Court of Appeals are supported by the record. And, so long as the findings of the said court are consistent with, or not palpably contrary to, the evidence on record, we decline to make a review on the probative value of the evidence.[15] In the instant case, We find no cogent reason to disturb the factual findings of the respondent court and its conclusion that petitioners failed to establish their case by preponderance of evidence.

The invariable applicable rule is to the effect that in order to maintain an action for recovery of ownership, the person who claims that he has a better right to the property must prove not only his ownership of the property claimed but also the identity thereof.[16] The party who desires to recover must fix the identity of the land claimed by describing the location, area and boundaries thereof.[17]

In the instant case, petitioners based their claim of ownership on the "1924 *Escritura de Transaccion",* the original copy of which was not presented in the trial court, while the photocopy was also lost when the original records were elevated to the respondent court. This was the only piece of evidence that would establish petitioners' ownership and the identity of subject lot 868. In ruling for petitioners heirs of Anastacio Fabela as the absolute owners of lot 868, the trial court found that in the Escritura, "it appears that the portion which is now identified as lot 868 had been entrusted to the possession of Carmelino Neri, as vendee-a retro, for a period of 14 years from the date of the instrument which was May 10, 1924 and upon the expiration of which said Carmelino Neri was to restore the possession of the property to Simeona Balhon and her children heirs of Anastacio Fabela, namely Petra Buenaventura, Julio and Pedro, all surnamed Fabela, without need of 'redemption'," and "that fulfillment of Neri's obligation

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[15] *Supra.*

[16] *Javier vs. CA*, 231 SCRA 498; *Laluan vs. Malpaya* , 65 SCRA 494.

[17] *Beo vs. CA*, 200 SCRA 575.

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was presumed to have taken place." We note, however, that nowhere in the trial court's narration of facts were the boundaries of the parcel of land indicated with particularity, nor the parcel of land referring to as lot 868. What really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.[18]

Moreover, the testimony of petitioner heir Teodula Fabela Paguidopon which was quoted in part in petitioners' own memorandum[19] did not also clearly establish the relation of the said *"Escritura de Transaccion"* to lot 868, to wit:

"Q: Now, that bigger lot has the cadastral lot number before?
A: No because that was not yet surveyed.

Q: Do you know who owns this lot?
A: Our grandfather Anastacio Fabela.

Q: Now while it was still in the hands of Anastacio Fabela while he was still alive, do you know what was the total area of the mother lot?
A: Yes, it was estimated by our father and we estimated it to be 18 hectares.

Q: Do you have evidence to prove that it was indeed 18 hectares?
A: Yes, ma'am.

Q: I am showing to you an old document but only a xerox copy thereof entitled *escritura de transaccion* notarized by Uldarico Akut in the year 1924, kindly take a look and see where is the 18 hectares which you have just mentioned?
A: This one.

x x x x x x x

ATTY. LLEGO:
"x x x We will have this marked as our Exhibits A, A-1 to A-3."

x x x x x x x

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[18] *Vda. de Tan vs. IAC*, 213 SCRA 95, citing *Dichoso vs. CA*, 192 SCRA 169; *Erico vs. Chigas*, 98 SCRA 575.

[19] *Rollo*, pp. 149-151.

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(TSN of 2/9/89 pages 16 to 18 (topmost)

COURT:

Plaintiff is ordered to prepare the English translation of that document.

x x x x x x x

(TSN of 2/9/89 page 18)

"ATTY. LLEGO: (continuing)

Q: You have pointed this portion as your basis for saying that the area is 18 hectares. Now kindly read this paragraph on the description of the land for purposes of record.
(witness is ready (sic)

Which, we pray that that portion being read into the record by witness be marked as our Exhibit A-4.

COURT:

Mark it. (page 18 bottom to page 19 middle portion of the page)."

Unfortunately, the description of the eighteen (18) hectare land which should had been read and incorporated into the transcript for purposes of record, was omitted in the quoted portion, to establish the exact location, area and boundary of the 18 hectare lot in relation to lot 868. The omission has created serious doubts as to the specific identity of the lot which petitioners sought to recover. Moreover, even in the petitioners' complaint filed before the trial court, there was no allegation of the metes and bounds of the subject lot, the complaint reads:

"3) a. That the grandfather of plaintiffs-the late Anastacio Fabela, had left among others, the following property, to wit:

a) Lot 870
Area:15,658 sq. m.
Location: Nabacaan, Misamis Oriental

b) Lot 868
Area: 48, 121 sq.m.
Location: Nabacaan, Misamis Oriental

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b. That the above described parcels of land are adjacent to each other as shown by a photocopy of the sketch plan from the Bureau of Lands hereto enclosed and marked as Annex "B";

c. That these two parcels since time immemorial used to be one big parcel of land, until in 1977 or 1978, when a government cadastral survey in Villanueva, Misamis Oriental, was undertaken by the Bureau of Lands, wherein a road was provided and made to appear across the big parcel of land, causing it to be divided physically and for which the government surveyors assigned two lots numbers for what used to be one big parcel of land, thus the appearance of Lot 870 and Lot 868; This once one big chunk of land never had a cadastral number in the past;"

Notably, the total area of lots 868 and 870 would only be about 63,679 sq. meters or about six (6) hectares which fails to correspond to the eighteen (18) hectare parcel of land allegedly owned by the late Anastacio Fabela which was the subject of the *"Escritura de Transaccion"* and testified to by Teodula Fabela Paguidopon. Petitioners failed to identify the land with that degree of certainty required to support their affirmative allegation of ownership.

Moreover, the respondent court found, and we agree, that the waiver of rights executed in 1980 by Roque Neri Sr., in favor of petitioners referred only to a portion of lot 870 and not to lot 868. Thus such waiver which petitioners capitalized on as an admission against Neri's interest did not in any way support petitioners' claim of ownership of lot 868. Said waiver reads:[20]

"ACKNOWLEDGMENT OF ADJUDICATION
AND QUITCLAIM

KNOW ALL MEN BY THESE PRESENTS:

That I, Roque Neri, Sr., of legal age, widower, Filipino, with residence and postal address at Villanueva, Misamis Oriental, Philippines, do hereby ACKNOWLEDGE AND CONFIRM that the certain portion of a parcel of land located at Balacanas, Villanueva, Misamis Oriental under Lot No. 870 of Pls. 923 of Villanueva Public Land Subdivision

[20] *Rollo*, pp.151-152.

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containing a total area of SIXTEEN THOUSAND SQUARE METERS (16,0000 sq. m.) which portion is more particularly described as follows:

North - Roque Neri, Sr.
East - Nabacaan Road
West - Tayum Creek
South - Lot 869

containing an area of EIGHT THOUSAND SQUARE METERS (8,000 sq. m.) is hereby adjudicated in favor of the Heirs of Anastacio Fabela.

That the above described portion of a parcel of land actually belongs and owned by said Heirs of Anastacio Fabela.

That the above described portion of land was erroneously included in the land survey conducted by the Bureau of Lands in my name.

That I hereby quitclaim and renounce whatever interest, rights and participation I have over the described portion of real property of which the Heirs of Anastacio Fabela were the lawful owners.

In witness whereof, I have hereunto set my hand this 18th day of August 1980 in Villanueva, Misamis Oriental, Philippines.

SGD. ILLEGIBLE
T/ROQUE NERI, SR."

A simple reading of the instrument would readily show that only 8,000 sq. meters of the entire 16,000 sq. meters included in lot 870 was adjudicated in favor of the heirs of Anastacio Fabela as belonging to them. In fact, petitioners in their memorandum admitted that only 8,000 sq. meters was given to them and yet they did not take any positive action to assert their ownership of the entire lot 870. Petitioners have accordingly no sound basis to claim lot 868 by virtue of such instrument. As the appellate court succinctly stated, "the fact that appellees were the ones paid by PHIVIDEC for the portion of lot 870 does not automatically lead to the conclusion that they also absolutely own lot 868. Most significantly, is appellees failure to adequately explain why they had not at all registered their claim over the property with the Bureau of Lands during and after the public survey in the municipality." Finally, petitioners also failed to allege much less establish that they are in possession of the subject lot.

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On the other hand, the respondent court found, and this finding was not refuted, that petitioners' own witness, Norberto Dumatol, a representative of the Bureau of Lands, testified that when a cadastral survey was conducted in 1971, the registered claimant of lot 868 based on their official record was Roque Neri Sr. Petitioners' allegation that Neri Sr., committed fraud in the registration in his name of these two (2) parcels of lot was not substantiated. The survey plan for lot 868 was approved for Roque Neri Sr. and he had also declared lot 868 for taxation purposes which was admitted by petitioners as their complaint prayed for the annulment of the plan and tax declaration. Although a tax declaration is not considered as conclusive proof of ownership the same is admissible in evidence to show the nature of the possession of the claimant of the property for which taxes have been paid. We accordingly find well-taken the respondent court's conclusion as follows:

"Thus, where it was shown that plaintiff has never paid the land tax, while the defendant has faithfully done so for many years, there being no explanation offered, it was held that such payment of taxes should be taken into consideration in favor of defendant. Being the exclusive possessors of the subject property who have declared the same for tax purposes through the years, defendants-appellants are entitled to such favorable presumption of ownership which so far had not been overturned by plaintiffs-appellees."

In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence.[21] If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not upon the weakness of that of his opponent.[22] When the record does not show that the land which is the subject matter of the action for recovery of ownership has been exactly determined, such action cannot prosper, inasmuch as the petitioners' ownership rights in the land claimed do not appear satisfactorily and conclusively proven at the trial.[23]

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[21] *Javier vs. CA, supra.*

[22] *Ibid* citing *Pornellosa vs. Land Tenure Administration*, 1 SCRA 375.

[23] *Del Valle vs. Mercado*, 34 Phil. 963.

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WHEREFORE, the petition is *DENIED* and the decision of the respondent Court of Appeals is *AFFIRMED*.

SO ORDERED.

Melo (Chairman), Vitug, and *Panganiban, JJ.,* concur.

Sandoval-Gutierrez, J., on leave.

THIRD DIVISION

[G.R. No. 142838. August 9, 2001]

ABELARDO B. LICAROS, *petitioner, vs.* **ANTONIO P. GATMAITAN,** *respondent.*

SYNOPSIS

The Anglo-Asean Bank and Trust Limited (Anglo-Asean), is a private bank registered and organized to do business under the laws of the Republic of Vanuatu but not in the Philippines. Its business consists primarily in receiving fund placements by way of deposits from institutions and individual investors from different parts of the world. Enticed by the lucrative prospects of doing business with Anglo-Asean, Abelardo Licaros, a Filipino businessman, decided to make a fund placement with said bank sometime in the 1980's. After having invested in Anglo-Asean, he encountered tremendous and unexplained difficulties in retrieving, not only the interest or profits, but also the very investments he had put in Anglo-Asean. He decided to seek the counsel of Antonio P. Gatmaitan, a reputable banker and investment manager who had been extending managerial, financial and investment consultancy services to various firms and corporations both here and abroad. Gatmaitan voluntarily offered to assume the payment of Anglo-Asean's indebtedness to Licaros subject to certain terms and conditions. In order to effectuate and formalize the parties' respective commitments, the two executed a notarized memorandum of agreement. Thereafter, Gatmaitan presented to