Supreme Court E-Library

SECOND DIVISION

[G.R. No. 158385. February 12, 2010]

MODESTO PALALI, *petitioner, vs.* **JULIET AWISAN, represented by her Attorney-in-Fact GREGORIO AWISAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; POSSESSION; ACTUAL PHYSICAL POSSESSION, ESTABLISHED.— As found by the trial court, petitioner was able to prove his and his predecessors' actual, open, continuous and physical possession of the subject property dating at least to the pre-war era (aside from petitioner's tax declaration over the subject property). Petitioner's witnesses were long time residents of Sitio Camambaey. They lived on the land, knew their neighbors and were familiar with the terrain. They were witnesses to the introduction of improvements made by petitioner and his predecessors-in-interest. From their consistent, unwavering, and candid testimonies, we find that petitioner's grandfather Mocnangan occupied the land during the pre-war era. He planted camote on the property because this was the staple food at that time. He then gave the subject property to his daughter Tammam, while he gave a separate one to his son Pacolan Mocnangan. In the 1960s, Tammam and her husband Palalag cultivated the land, built a cogon home, and started a family there. Palalag introduced terraces and, together with his sons, built earth fences around the property. Palalag's family initially planted bananas, coffee, and oranges; they later added avocadoes, persimmons, and pineapples. When Tammam and Palalag died, their son, petitioner herein, buried them in the subject property and continued cultivating the land. He also constructed a new home.

2. ID.; OWNERSHIP; TAX DECLARATION WITHOUT PROOF OF ACTUAL POSSESSION DOES NOT PROVE OWNERSHIP.— [R]espondent relied merely on her tax declaration, but failed to prove actual possession insofar as

Supreme Court E-Library

the subject property is concerned. To be sure, respondent *attempted* to prove possession of the subject property. Her predecessor-in-interest, Cadwising, had allegedly introduced improvements like a piggery, poultry, terracing, plantings, and a barbed wire fence. However, not one of these alleged improvements was found during the ocular inspection conducted by the trial court. The absence of all his alleged improvements on the property is suspicious in light of his assertion that he has a caretaker living near the subject property for 20 years. Cadwising did not even bother to explain the absence of the improvements. The trial court's rejection of Cadwising's assertions regarding the introduction of improvements is therefore not baseless. Thus, respondent having failed to prove possession, her claim rests solely on her tax declaration. But tax declarations, by themselves, are not conclusive evidence of ownership of real property. In the absence of actual, public, and adverse possession, the declaration of the land for tax purposes does not prove ownership. Respondent's tax declaration, therefore, cannot serve as basis to oust petitioner who has been in possession (by himself and his predecessors) of the subject property since before the war.

3. ID.; ID.; ONE WHO HAS NO RIGHT TO THE PROPERTY BEING TRANSFERRED, TRANSFERS NO BETTER RIGHT TO HIS TRANFEREE.— Neither can respondent rely on the public instruments dealing with the 6.6698-hectare property covered by her tax declaration. Such public documents merely show the successive transfers of the property covered by said documents. They do not conclusively prove that the transferor actually owns the property purportedly being transferred, especially as far as third parties are concerned. For it may very well be that the transferor does not actually own the property he has transferred, in which case he transfers no better right to his transferee. No one can give what he does not have – *nemo dat quod non habet*. Thus, since respondent's predecessor-in-interest Cadwising appeared not to have any right to *the subject property*, he transferred no better right to his transferees, including respondent.

Supreme Court E-Library

4. ID.; ID.; ONE WHO WAS ABLE TO PROVE ACTUAL PHYSICAL POSSESSION COUPLED WITH A TAX DECLARATION HAS A BETTER CLAIM OR TITLE TO THE PROPERTY.— [W]e hold that as between the petitioner and the respondent, it is the petitioner who has the better claim or title to the subject property. While the respondent merely relied on her tax declaration, petitioner was able to prove actual possession of the subject property coupled with his tax declaration. We have ruled in several cases that possession, when coupled with a tax declaration, is a weighty evidence of ownership. It certainly is more weighty and preponderant than a tax declaration alone.

5. ID.; ID.; ACTUAL POSSESSOR UNDER CLAIM OF OWNERSHIP ENJOYS THE PRESUMPTION OF OWNERSHIP.— The preponderance of evidence is therefore clearly in favor of petitioner, particularly considering that, as the actual possessor under claim of ownership, he enjoys the presumption of ownership.

6. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; RESTS ON THE PARTY WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE.— [S]ettled is the principle that a party seeking to recover real property must rely on the strength of her case rather than on the weakness of the defense. The burden of proof rests on the party who asserts the affirmative of an issue. For he who relies upon the existence of a fact should be called upon to prove that fact. Having failed to discharge her burden to prove her affirmative allegations, we find that the trial court rightfully dismissed respondent's complaint.

APPEARANCES OF COUNSEL

Sergio SJ Milan for petitioner.
Rudolfo A. Lockey for respondent.

Supreme Court E-Library

D E C I S I O N

DEL CASTILLO, *J.*:

A person occupying a parcel of land, by himself and through his predecessors-in-interest, enjoys the presumption of ownership. Anyone who desires to remove him from the property must overcome such presumption by relying solely on the strength of his claims rather than on the weakness of the defense.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the September 27, 2002 Decision[2] and the April 25, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 52942. The challenged Decision disposed as follows:

> WHEREFORE, premises considered, the assailed decision of the trial court dated May 24, 1996 is hereby **REVERSED AND SET ASIDE** and a new one is entered:
>
> 1. Awarding the subject land in favor of the [respondent] with the exclusion of the area where the residential house of the [petitioner] is erected.
>
> 2. Ordering the [petitioner] to vacate the rootcrop land and surrender its possession in favor of the [respondent], and enjoining the [petitioner] to refrain from doing any act disturbing the [respondent's] peaceful possession and enjoyment of the same.
>
> 3. Cancelling Tax Declaration No. 31297 of the [petitioner] insofar as the rootcrop land of .0648 hectares is concerned, with the exclusion of his residential land. All other reliefs and remedies prayed for are **DENIED**, there being no sufficient evidence to warrant granting them.
>
> SO ORDERED.[4]

---

[1] *Rollo*, pp. 3-17.

[2] *Id.* at 77-93; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Martin S. Villarama, Jr. and Remedios Salazar-Fernando.

[3] *Id.* at 102-103.

[4] *Id.* at 91-92.

Supreme Court E-Library

Factual Antecedents

Respondent Juliet Awisan claimed to be the owner[5] of a parcel of land in Sitio Camambaey, Tapapan, Bauko, Mountain Province, allegedly consisting of 6.6698 hectares[6] and covered by Tax Declaration No. 147 in her name.[7] On March 7, 1994, she filed an action for quieting of title against petitioner Modesto Palali, alleging that the latter occupied and encroached on the *northern portion* of her property and surreptitiously declared it in his name for tax purposes.[8] We shall refer to this land occupied by petitioner, which allegedly encroached on the northern portion of respondent's 6.6698-hectare land, as the "*subject property.*" Respondent prayed to be declared the rightful owner of the northern portion, for the cancellation of petitioner's tax declaration, and for the removal of petitioner and his improvements from the property.[9]

---

[5] As donee in a Deed of Donation dated November 6, 1993, records, pp. 6-7.

[6] Before the conduct of the pre-trial conference, respondent sold a portion of her property to a third party (Deed of Sale of a Portion of Real Estate dated May 24, 1994, *id.* at 59). Thus, her alleged landholding was reduced to 5.4326 hectares. For some reason unbeknown to the Court, respondent continued to refer to her property as consisting of 6.6698 hectares (*Id.* at 29). Thus, both the trial and appellate courts also referred to her property as consisting of its original 6.6698 hectares. For convenience, particularly in reviewing the decisions of the trial and appellate courts, we shall continue to refer to the property allegedly owned by respondent as consisting of "6.6698 hectares," but it should be kept in mind that the actual size of the land allegedly owned by respondent was reduced to 5.4326 hectares.

[7] The plaintiff describes the land donated to her as follows:

> ROOTCROP LAND – situated at sitio Camambaey, Tapapan, Bauko, Mt. Province, bounded on the north by a Creek and the Provincial Road; on the south by a creek and public land; on the east by the provincial road, and west by public land and the municipal road, containing an area of 6.6698 hectares, more or less, and declared for taxation purposes in the name of plaintiff under TD No. 147 of the Municipal Tax Rolls of Bauko, Mt. Province, *id.* at 1.

[8] *Id.* at 2-3.

[9] *Id.* at 3-4.

Supreme Court E-Library

Respondent's (Plaintiff's) Allegations

According to respondent, the 6.6698 hectare land was originally owned by her father, Cresencio Cadwising. The latter testified that he and his wife were able to consolidate ownership over the land by declaring them from public land as well as by purchasing from adjoining landowners. He admitted including in his tax declaration a communal sacred lot (*patpatayan*) even if he did not acquire free patent title over the same. As for the properties he bought, these were generally purchased without any documentation, save for two.[10]

Cadwising also claimed having introduced improvements on the subject property as early as the 1960s.[11] The 6.6698 hectare land was mortgaged to the Development Bank of the Philippines (DBP), which acquired it in the foreclosure sale. DBP then sold the land to one Tico Tibong, who eventually donated the same to respondent.

Petitioner's (Defendant's) Allegations

In his defense, petitioner denied the encroachment and asserted ownership over the subject property. He maintained that he and his ancestors or predecessors-in-interest have openly and continuously possessed the subject land since time immemorial. He and his siblings were born on that land and, at that time, the area around the house was already planted with bananas, *alnos*, and coffee.[12] When his mother died, he buried her in the lot beside the house in 1975; while his father was buried near the same plot in 1993.[13] His own home had been standing on the property for the past 20 years. Petitioner insisted that during this entire time, no one disturbed his ownership and possession thereof.[14]

---

[10] Affidavit of Transfer of Real Property, *id.* at 75; Deed of Absolute Sale, *id.* at 73.

[11] TSN, September 30, 1994, pp. 13-14.

[12] TSN, May 30, 1995, p. 3.

[13] *Id.* at 2-3.

[14] Records, p. 32.

Supreme Court E-Library

Sometime in 1974, petitioner declared the said land in his name for taxation purposes.[15] The said Tax Declaration indicates that the property consists of 200 square meters of residential lot and 648 square meters of rootcrop land (or a total of 848 square meters).

Proceedings before the Regional Trial Court

It is worth mentioning that both the complaint[16] and the pre-trial brief[17] of respondent alleged encroachment only on the *northern* portion of her 6.6698-hectare land. During trial, however, respondent's attorney-in-fact, Gregorio Awisan,[18] and

---

[15] Tax Declaration No. 31297 was issued in 1974, *id.* at 111.

[16] *Id.* at 3. The sixth paragraph of the complaint reads:

That said acts of defendant in encroaching, entering the land of herein plaintiff, particularly the said NORTHERN portion thereof, and thereafter declaring the same surreptitiously for taxation purposes as abovementioned, and thereby claiming ownership and possession of said NORTHERN portion, is patently illegal, fraudulent and unjustified, and which acts of defendant constitute a cloud and a thorn to the title of ownership of and possession of herein plaintiff, which she now prays for the removal and consequently cleared and dissipated in accordance with law x x x .

[17] *Id.* at 29-31. The salient portion reads:

x x x That since its acquisition, plaintiff and family, have been in open, adverse, continuous and uninterrupted possession of the same, tilling and cultivating it until the present without anyone questioning their said possession and ownership, including defendant herein. It was only sometime the early months of 1992, and before the aforementioned donation was formalized, plaintiff, who is residing at Baguio City, sought assistance from her father-in-law (herein atty-in-fact, Gregorio Awisan) to look into the present status of the said land, as a result of which, the latter informed that one by the name of Modesto Palali x x x have encroached and actually entered the property, particularly *the northern side thereof*, and even declared a portion thereof with an area of 848 square meters, more or less, as reflected in the latter's Tax Declaration bearing No. 31793 of the Municipal Tax Rolls of Bauko, Mt. Province.

[18] TSN, September 28, 1994, pp. 7-8.

Q: Do you know the portions of this land entered into by the defendants [sic]?

A: Yes.

x x x x x x x x x

Supreme Court E-Library

respondent's predecessor-in-interest, Cresencio Cadwising,[19] both *alleged* that there was an encroachment in the *southern* portion also. This was done without amending the allegations of the complaint.

Confronted with this new allegation of encroachment on the *southern* portion, petitioner tried to introduce his tax declaration over the same (in the name of his deceased father), but was objected to by respondent on the ground of immateriality.[20]

Q: Will you describe the portion of that property?

A: North is near his [petitioner's] house maybe about 2,000 to 3,000 square meters. In the south is about 1,500 square meters.

[19] TSN, September 30, 1994, pp. 13 and 17-18.

Q: Beside this land of Duclan is a land marked as Palali, Exh. "C-5", what does that land refer to?

A: This is the land which Palali entered.

Q: Is that the land that is now being litigated in this case?

A: Yes, sir.

x x x x x x x x x

Q: I show you Exh. "C-6" as claimed by Modesto Palali, what does this exhibit refer to?

A: This is another portion which Palali entered.

Q: Is this the portion which is the subject of this case?

A: A part of the case.

[20] TSN, May 30, 1995, pp. 9 and 11-12.

Q: Do you have tax declaration on the land in question?

A: There is.

x x x x x x x x x

Q: I am showing to you Exhs. 1, 2, 3 which are tax declaration nos. 31297, 32674, and 31793; are these the tax declarations on the land in question?

A: Yes, sir.

x x x x x x x x x

Q: During ocular inspection also, the plaintiff's representative [sic] named Cresencio Cadwising included *another* portion to the *south* of the property in question; who owns that property that was included by Cresencio Cadwising on the south?

A: The southern part is also owned by my parents, and distributed among us which we in turn gave to our children.

Supreme Court E-Library

After such objection, however, respondent surprisingly and inconsistently insisted that the ownership of the southern portion was included in the complaint and was an issue in the case. The ensuing confusion over the subject of the case is revealed in the following exchange between the parties' lawyers:[21]

Atty. Awisan: Where is the land in question located?
Palali: In Tapapan, Bauko, sir.

Atty. Awisan: Where is that situated in relation to your house?
Palali: It is near my house which is enclosed with fence.

Atty. Awisan: How about the land in question situated *in the southern portion*, do you know that?
Palali: That is the land our parents gave to us as inheritance. There are terraces there.

Atty. Awisan: So, the land in question [is] located below your house and on the southern portion?

Atty. Bayogan: As far as the southern portion is concerned, it is *not included* in the complaint.

Atty. Awisan: It is included.

Atty. Bayogan: The southern portion refer[s] to Lot 3 and it is not included in the complaint. *In fact when I started asking question regarding this land, the counsel objected.*

Atty. Awisan: This land indicated as Lot 3 is the southern portion.

Q: In other words, that property which was included by Cresencio Cadwising at the southern side during ocular inspection also belongs to the Palali clan?

A: Yes, sir.

x x x x x x x x x

Q: Does your father have tax declaration over that southern property?

A: Yes, sir.

Q: Will you be able to bring that to court if necessary?

A: Yes, sir.

Atty: Awisan (for plaintiff): Immaterial.

Court: Proceed with matters related to the issue.

[21] TSN, May 30, 1995, pp. 13-14.

Supreme Court E-Library

The trial court, apparently relying on the allegations of the complaint, ruled on the *northern portion* as the subject property of the case.

Ruling of the Regional Trial Court

After due trial, the Regional Trial Court of Bontoc, Mountain Province, Branch 35, dismissed[22] the complaint. It based its decision on respondent's failure to prove her allegation of physical possession of the land. Going by the results of its ocular inspection[23] of the land in question, the trial court noted that Cadwising (respondent's predecessor-in-interest) could not pinpoint and the court did not see *any* of the improvements that Cadwising had allegedly introduced to the land.[24] Thus, the trial court held that respondent's claim of ownership was supported solely by her tax declarations and tax payment receipts which, by themselves, are not conclusive proof of ownership.[25]

In contrast, the trial court duly verified during the ocular inspection the existence of the improvements introduced by petitioner and his predecessors on the subject property.[26] Moreover, the trial court observed that the witnesses for the petitioner all lived continuously since their births within or near Sitio Camambaey in Tapapan and that they knew the land very well. They knew petitioner and his predecessors, as well as the improvements introduced by them to the land. Thus, the trial court found that the petitioner presented overwhelming proof of actual, open, continuous and physical possession of the property since time immemorial. Petitioner's possession,

---

[22] Decision dated May 24, 1996; penned by Judge Manuel B. Bragado, records, pp. 153-161.

[23] The ocular inspection was conducted on January 20, 1995. See Transcript of the Proceedings had during the Ocular Inspection of the Land in Question, *id.* at 59-64.

[24] *Id.* at 158.

[25] *Id.* at 160.

[26] *Id.* at 158-159.

Supreme Court E-Library

coupled with his tax declarations, is strong evidence of ownership which convinced the court of his better right to the property.[27]

For purposes of clarity, we cite the dispositive portion of the trial court's Decision thus:

> Wherefore, premises considered, judgment is hereby rendered in favor of the defendant Modesto Palali and against the plaintiff Juliet C. Awisan, represented by her Attorney-in-Fact, Gregorio B. Awisan, as follows:
>
> a) Ordering the dismissal of the complaint and costs against the plaintiff;
>
> b) Adjudging the defendant Modesto Palali as the owner and lawful possessor *of the subject property*; and
>
> c) The court cannot however grant the counterclaim of defendant for lack of evidence to prove the same.
>
> SO ORDERED.[28]

Ruling of the Court of Appeals

Respondent appealed the trial court's decision to the CA, which reversed the same. The CA found that petitioner failed to prove actual possession of the *entire* 6.6698 hectare land, which the CA believed to be the subject of the case. According to the appellate court, petitioner was only able to prove actual occupation of the portion where his house was located and the area below where he had planted fruit-bearing plants.[29]

The CA also ruled that based on the ocular inspection report of the trial court, petitioner's possession did not extend to the entire 6.6698 hectares. In its own words:

> Likewise, the report on the ocular inspection of the land in question divulges that the alleged possession of the land by [petitioner] Modesto Palali does not extend to the entire 6.6698 hectares of the subject land. Not even in the sketch plan of the land does it illustrate

---

[27] *Id.* at 160.

[28] *Id.* at 160-161.

[29] *Rollo*, pp. 87-88.

Supreme Court E-Library

that the possession of the [petitioner] refers to the entire subject land. Instead, the possession of [petitioner] merely points to certain portions of the subject land as drawn and prepared by the tax mappers.

From the foregoing testimony, no sufficient indicia could be inferred that the possession of the [petitioner] refers to the entire portion of the land.[30]

The appellate court also refused to give credence to petitioner's tax declaration. The CA held that petitioner's Tax Declaration No. 31793, which covers only an 848-square meter property, is incongruous with his purported claim of ownership over the entire 6.6698-hectare land.

Proceeding from this premise, the CA gave greater weight to the documentary and testimonial evidence of respondent. The presumption of regularity was given to the public documents from which respondent traced her title to the subject property.

Thus, the CA awarded the entire 6.6698-hectare property to respondent and ordered the cancellation of petitioner's tax declaration (except for the 200-square meter residential lot thereof which was not being claimed by respondent).[31]

Petitioner moved for a reconsideration of the unfavorable Decision, but his motion was denied for lack of merit.

Hence, this petition.

Preliminary Matter

The CA Decision is based on a mistaken understanding of the subject property

[30] *Id.* at 88-89.

[31] The CA described the subject property as follows:

At the outset, the subject land being claimed by plaintiff-appellant as described in the complaint is the 6.6698 hectares land bounded by a canal on the northeast and pine land on the northwest, on the west by a *barangay* road, by the pine land on the southwest and riceland on the southeast, and on the east by a provincial road. The said description is *with the exclusion of the portion of land where the residential house of the defendant-appellee is erected. Id.* at 87.

Supreme Court E-Library

It is apparent that the CA Decision proceeded from an erroneous understanding of what the subject property actually is and what the trial court actually ruled upon. The CA was under the mistaken impression that the subject property was the *entire* 6.6698 hectares of land allegedly owned by respondent under her Tax Declaration No. 147. Because of this, the CA ruled against petitioner on the ground that he failed to prove possession of the *entire* 6.6698 hectares. The CA also disregarded petitioner's Tax Declaration No. 31793 (despite being coupled with actual possession) because the said tax declaration covered only an 848-square meter property and did not cover the *entire* 6.6698 hectare property. This is clear from the following text lifted from the CA Decision:

> The trial court's finding that the defendant-appellee had acquired the subject land by virtue of acquisitive prescription cannot be countenanced. At the outset, *the subject land being claimed by the plaintiff-appellant as described in the complaint is the 6.6698 hectares land* [*boundaries omitted*]. The said description is with the exclusion of the portion of land where the residential house of the defendant-appellee is erected. *However, the adverse and exclusive possession offered by the defendant-appellee, which includes his tax receipt, does not refer to the* ***entire*** *land consisting of 6.6698 hectares being claimed by the plaintiff-appellant.* x x x The witnesses for the defendant-appellee testified that indeed Modesto Palali's predecessors-in-interest have once built a house in Camambaey, Tapapan, Bauko, Mt. Province, but *whether or not the defendant-appellee or his predecessor-in-interest have actually, exclusively, notoriously, and adversely possessed the* ***entire*** *6.6698 hectares of land could not be deduced from their testimonies.* It could be gleaned from the testimony of Consigno Saligen, that what the defendant-appellee actually possessed and claim as their own is merely that portion where the house is erected and that portion of land below the house where Modesto Palali planted fruit-bearing plants. x x x
>
> Likewise, the report on ocular inspection of the land in question divulges that *the alleged possession of the land by defendant-appellee Modesto Palali does not extend to the* ***entire*** *6.6698 hectares of the subject land.* Not even in the sketch plan of the land does it illustrate that the possession of the defendant-appellee refers to the entire subject land. Instead, the possession of the

Supreme Court E-Library

defendant-appellee merely points to certain portions of the subject land as drawn and prepared by the "tax mappers".

From the foregoing testimony, no sufficient indicia could be inferred that the possession of the defendant-appellee refers to the entire portion of the land.[32]

This was perhaps not entirely the appellate court's fault, because a reading of the issues presented by respondent to the CA gives the wrong impression that the subject property is the *entire* 6.6698 hectares:

x x x [T]he plaintiff-appellant elevated the matter on appeal assigning the following errors committed by the trial court:

I

The trial court erred in failing to consider the overwhelming superior documentary and oral evidence of the plaintiff Juliet C. Awisan showing her ownership on (sic) the *land in question consisting of 6.6698 hectares* described in her complaint

II

The *trial court erred in adjudicating the land in question to the defendant Modesto Palali* who is a squatter on the land whose tax declaration merely overlapped or duplicated that of the plaintiff and which *covered only a small portion* of 200 square meters of residential portion [sic] and 648 square meter of rootcrop land.

x x x[33]

The foregoing formulation of the issues presented by respondent before the CA erroneously described "the land in question" as "consisting of 6.6698 hectares" and erroneously stated that the trial court "adjudicated the land in question to [petitioner]." Said formulation is very misleading because the case before the trial court did not involve the ownership of the entire 6.6698 hectares, but merely the *northern* portion thereof – the property actually occupied by petitioner and much smaller than 6.6698 hectares. Even if we go back to the respondent's

---

[32] *Id.* at 87-89.

[33] *Id.* at 85. Emphasis supplied.

Supreme Court E-Library

complaint, we would find there that respondent is claiming encroachment merely of the "northern portion" of her 6.6698-hectare property, and not of the entire 6.6698 property.[34]

Neither did the trial court adjudicate to petitioner the entire 6.6698-hectare land; it simply upheld petitioner's right to the property he is actually occupying. It only declared petitioner as the lawful owner and possessor of the "subject property," which is the property to the north of the 6.6698-hectare land and occupied by petitioner. This is evident from the trial court's summary of the facts established by the respondent and her witnesses, to wit:

> During the hearing of the case, plaintiff and her witnesses established and disclosed: x x x that *only a portion of the entire 6.6 hectares in its northern portion located below and above the residential house of the defendant Modesto Palali* is now the land in question as properly shown in the sketch of the land covered by Tax Declaration No. 147 in the name of Juliet Awisan x x x.[35]

Proceeding from a wrong premise as to what is the subject property, the CA utterly failed to appreciate the evidence as they relate to the parties' claims. Thus, while the general rule is that this Court is not a trier of facts, and that in a petition for review under Rule 45, only questions of law may be raised, the Court is behooved to admit the instant case as an exception.[36]

Issue

The issue in this case is who between the parties has the better right to the subject property.

Our Ruling

Having gone over the parties' evidence before the trial court, we find adequate support for the trial court's ruling in favor of petitioner. The CA erred in reversing the trial court's findings,

---

[34] Records, p. 154.

[35] *Id.* at 157.

[36] *Tio v. Abayata,* G.R. No. 160898, June 27, 2008, 556 SCRA 175, 184; *Sampayan v. Court of Appeals,* 489 Phil. 200, 207-208 (2005).

Supreme Court E-Library

particularly because, as discussed above, such reversal was premised on the CA's erroneous understanding of the subject property.

As found by the trial court, petitioner was able to prove his and his predecessors' actual, open, continuous and physical possession of the subject property dating at least to the pre-war era (aside from petitioner's tax declaration over the subject property). Petitioner's witnesses were long time residents of Sitio Camambaey. They lived on the land, knew their neighbors and were familiar with the terrain. They were witnesses to the introduction of improvements made by petitioner and his predecessors-in-interest.

From their consistent, unwavering, and candid testimonies, we find that petitioner's grandfather Mocnangan occupied the land during the pre-war era. He planted camote on the property because this was the staple food at that time. He then gave the subject property to his daughter Tammam, while he gave a separate one to his son Pacolan Mocnangan. In the 1960s, Tammam and her husband Palalag cultivated the land, built a cogon home, and started a family there. Palalag introduced terraces and, together with his sons, built earth fences around the property. Palalag's family initially planted bananas, coffee, and oranges; they later added avocadoes, persimmons, and pineapples. When Tammam and Palalag died, their son, petitioner herein, buried them in the subject property and continued cultivating the land. He also constructed a new home.

On the other hand, respondent relied merely on her tax declaration, but failed to prove actual possession insofar as the subject property is concerned. To be sure, respondent *attempted* to prove possession of the subject property. Her predecessor-in-interest, Cadwising, had allegedly introduced improvements like a piggery, poultry, terracing, plantings, and a barbed wire fence. However, not one of these alleged improvements was found during the ocular inspection conducted by the trial court. The absence of all his alleged improvements on the property is suspicious in light of his assertion that he has a caretaker living near the subject property for 20 years. Cadwising did

Supreme Court E-Library

not even bother to explain the absence of the improvements. The trial court's rejection of Cadwising's assertions regarding the introduction of improvements is therefore not baseless.

Thus, respondent having failed to prove possession, her claim rests solely on her tax declaration. But tax declarations, by themselves, are not conclusive evidence of ownership of real property. In the absence of actual, public, and adverse possession, the declaration of the land for tax purposes does not prove ownership.[37] Respondent's tax declaration, therefore, cannot serve as basis to oust petitioner who has been in possession (by himself and his predecessors) of the subject property since before the war.

Neither can respondent rely on the public instruments dealing with the 6.6698-hectare property covered by her tax declaration. Such public documents merely show the successive transfers of the property covered by said documents. They do not conclusively prove that the transferor actually owns the property purportedly being transferred, especially as far as third parties are concerned. For it may very well be that the transferor does not actually own the property he has transferred, in which case he transfers no better right to his transferee. No one can give what he does not have – *nemo dat quod non habet*.[38] Thus, since respondent's predecessor-in-interest Cadwising appeared not to have any right to *the subject property*, he transferred no better right to his transferees, including respondent.

All told, we hold that as between the petitioner and the respondent, it is the petitioner who has the better claim or title to the subject property. While the respondent merely relied on her tax declaration, petitioner was able to prove actual possession of the subject property coupled with his tax declaration. We have ruled in several cases that possession, when coupled with a tax

---

[37] *Daclag v. Macahilig*, G.R. No. 159578, July 28, 2008, 560 SCRA 137, 151-152; *Cequeña v. Bolante*, 386 Phil. 419, 430-431 (2000).

[38] *Daclag v. Macahilig*, *supra* at 150-151.

Supreme Court E-Library

declaration, is a weighty evidence of ownership.[39] It certainly is more weighty and preponderant than a tax declaration alone.

The preponderance of evidence is therefore clearly in favor of petitioner, particularly considering that, as the actual possessor under claim of ownership, he enjoys the presumption of ownership.[40] Moreover, settled is the principle that a party seeking to recover real property must rely on the strength of her case rather than on the weakness of the defense.[41] The burden of proof rests on the party who asserts the affirmative of an issue. For he who relies upon the existence of a fact should be called upon to prove that fact. Having failed to discharge her burden to prove her affirmative allegations, we find that the trial court rightfully dismissed respondent's complaint.

A final note. Like the trial court, we make no ruling regarding the *southern portion* of the property (or Lot 3, as referred to by the parties), because this property was not included in respondent's complaint. Although the Rules of Court provide that "when issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings,"[42] such rule does not apply here. Respondent objected[43] when petitioner tried to prove his ownership of Lot 3 on the ground of immateriality, arguing that ownership of Lot 3 was not an issue. Respondent cannot now insist otherwise.

WHEREFORE, the petition is *GRANTED*. The September 27, 2002 Decision as well as the April 25, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 52942 are *REVERSED*

---

[39] *Cequeña v. Bolante, supra*; *Llanes v. Republic*, G.R. No. 177947, November 27, 2008, 572 SCRA 258, 271; *Heirs of Arzadon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 410.

[40] *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 771 (2002).

[41] NEW CIVIL CODE, Article 434.

[42] RULES OF COURT, Rule 10, Section 5.

[43] *Supra* note 20.

Supreme Court E-Library

and SET ASIDE. The May 24, 1996 Decision of the Regional Trial Court of Bontoc, Mountain Province, Branch 35 is *REINSTATED and AFFIRMED.* Costs against respondent.

SO ORDERED.

Carpio (Chairperson), Brion, Abad, and P*erez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 168967. February 12, 2010]

CITY OF ILOILO represented by HON. JERRY P. TREÑAS, City Mayor, *petitioner, vs.* **HON. LOLITA CONTRERAS-BESANA, Presiding Judge, Regional Trial Court, Branch 32, and ELPIDIO JAVELLANA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; TWO STAGES OF EXPROPRIATION PROCEEDINGS. — Expropriation proceedings have two stages. The first phase ends with an order of dismissal, or a determination that the property is to be acquired for a public purpose. Either order will be a final order that may be appealed by the aggrieved party. The second phase consists of the determination of just compensation. It ends with an order fixing the amount to be paid to the landowner. Both orders, being final, are appealable.

2. ID.; ID.; ID.; THE RECKONING DATE FOR THE DETERMINATION OF JUST COMPENSATION SHOULD BE THE DATE OF THE FILING OF THE COMPLAINT. — When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined **as of the**