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place other than that designated in the notice, the sheriff acts without warrant of law.[13] Publication is required to give the extrajudicial foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. To allow the parties to waive this jurisdictional requirement would result in converting into a private sale what ought to be a public auction.[14]

We thus find no reversible error in the ruling of the appellate court. We affirm the nullity of the extrajudicial foreclosure sale for non- compliance with the mandatory requirement of publication of the notice of sale.

**WHEREFORE,** we *DENY* the petition. We *AFFIRM* the Decision dated 4 March 2004 and the Resolution dated 7 June 2004 of the Court of Appeals in CA-G.R. CV No. 59109.

**SO ORDERED.**

*Puno, C.J. (Chairperson), Corona, Leonardo-de Castro,* and *Bersamin, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 165141. September 11, 2009]

**PEREGRINA MISTICA,** *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; LAND REGISTRATION; CONFIRMATION OF IMPERFECT TITLE; WHO MAY APPLY; REQUIREMENTS.** — Section 14(1) of P.D. No. 1529 states: SEC. 14. *Who*

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[13] See *Campomanes v. Bartolome,* 38 Phil. 808 (1918).

[14] See *Ouano v. Court of Appeals,* 446 Phil. 690 (2003).

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*may apply*. — x x x Likewise, Section 48(b) of Commonwealth Act 141, as amended by Section 4 of P.D. No. 1073, provides: x x x. In accordance with the aforesaid laws, any person, by himself or through his predecessor-in-interest, who has been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945 or earlier, may file in the proper trial court an application for registration of title to land, whether personally or through his duly authorized representative. Being the applicant for confirmation of imperfect title, petitioner bears the burden of proving that: 1) the land forms part of the alienable and disposable land of the public domain; and 2) she has been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier. These the petitioner must prove by no less than clear, positive and convincing evidence.

**2. ID.; ID.; ID.; ID.; ID.; WHILE A TAX DECLARATION BY ITSELF IS NOT ADEQUATE TO PROVE OWNERSHIP, IT MAY SERVE AS SUFFICIENT BASIS FOR INFERRING POSSESSION. —** It is true that petitioner presented tax declarations of the subject lot, as well as tax receipts evidencing payment thereof. The Court notes, however, that the tax declaration was effective only in 1998, and that the tax receipts were dated 1997 and 1998. She failed to adduce in evidence any tax declaration over the property under the name of her parents and that the realty taxes for the property had been paid prior to 1998. At best, she offered a copy of a tax declaration which began in 1985 in the name of her co-heirs. While a tax declaration by itself is not adequate to prove ownership, it may serve as sufficient basis for inferring possession. The voluntary declaration of a piece of real property for taxation purposes not only manifests one's sincere and honest desire to obtain title to the property, but also announces an adverse claim against the state and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

**3. ID.; ID.; ID.; ID.; ID.; GENERAL STATEMENTS THAT ARE MERE CONCLUSIONS OF LAW AND NOT FACTUAL**

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**PROOF OF POSSESSION ARE UNAVAILING AND CANNOT SUFFICE. —** Moreover, in her direct testimony, petitioner only stated that her parents were the owners and possessors of the subject lot since she was still very young. She added that, considering that she was 73 years old when she testified (in 1999), her parents could have owned and possessed the property for more than 50 years. Still, her testimony failed to meet the standard required by law. Petitioner failed to state the facts and circumstances evidencing the alleged ownership of the land applied for. To be sure, general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice.

**4. ID.; ID.; ID.; ID.; ID.; ACTUAL POSSESSION AND OCCUPATION ARE REQUIRED TO ACQUIRE TITLE TO ALIENABLE LANDS OF PUBLIC DOMAIN. —** More importantly, we would like to stress that possession alone is not sufficient to acquire title to alienable lands of the public domain because the law requires ***possession and occupation***. Since these words are separated by the conjunction "and," the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive, and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property. With the general statements made by petitioner that she and her predecessors-in-interest have been in possession of the property, and even with the Deed of Absolute Sale allegedly executed in 1921, actual possession of the subject lot was not convincingly established.

**APPEARANCES OF COUNSEL**

*Punzalan & Punongbayan Law Office* for petitioner.
*The Solicitor General* for respondent.

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## D E C I S I O N

**NACHURA, *J.*:**

This is a petition for review on *certiorari* of the Court of Appeals (CA) April 2, 2004 Decision[1] in CA-G.R. CV No. 75058 and August 18, 2004 Resolution[2] denying petitioner Peregrina Mistica's motion for reconsideration.

On July 23, 1998, petitioner filed with the Municipal Trial Court (MTC) of Meycauayan, Bulacan, an Application for Registration of Title[3] over a parcel of land known as Lot 7766-D located in Malhacan, Meycauayan, Bulacan.[4]

In her application, docketed as Land Registration Case No. N-98-09, petitioner alleged that she is the owner in fee simple of the land sought to be registered. She claimed that she and her predecessors-in-interest have been in possession of the subject lot since time immemorial. She further averred that she did not know of any lien, mortgage or encumbrance affecting said lot or that any person has any claim or interest therein, legal or equitable, remainder, reversion, or expectancy.[5]

Attached to the application were the following documents: 1) the technical description of the subject lot;[6] 2) Certification in Lieu of Lost Surveyor's Certificate;[7] 3) tax declaration of Real Property No. 06075, covering the subject lot effective 1998;[8]

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Mariano C. del Castillo and Vicente Q. Roxas, concurring; *rollo*, pp. 9-19.

[2] *Id.* at 20.

[3] Records, pp. 5-8.

[4] *Id.* at 5.

[5] *Id.* at 5-6.

[6] *Id.* at 9.

[7] *Id.* at 10.

[8] *Id.* at 13.

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4) official receipts of realty tax payments;[9] and 5) blueprint/ machine copies of Subdivision Plan Csd-03-010587-D.[10]

Petitioner, thus, prayed for the registration and confirmation of her title over the subject lot.[11]

Respondent Republic of the Philippines, represented by the Director of Lands, through the Office of the Solicitor General, filed an opposition[12] to the application on the grounds that: a) neither the applicant nor her predecessors-in-interest had been in open, continuous, exclusive, and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto; b) the muniments of title did not appear to be genuine and did not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for, or of petitioner's open, continuous, exclusive, and notorious possession and occupation thereof in the concept of an owner since June 12, 1945; c) the claim of ownership in fee simple of the subject lot on the basis of a Spanish title or grant could no longer be availed of by petitioner who failed to file an appropriate application for registration within a period of six (6) months from January 16, 1976 as required by Presidential Decree (P.D.) No. 892; and d) the subject lot applied for was a portion of the public domain belonging to the Republic of the Philippines not subject to private appropriation.[13]

During trial, petitioner testified that the previous owner and possessor of the subject lot was her father. She added that her father acquired the property by virtue of a contract of sale but she could not remember the vendor's name.[14] In support thereof, she presented a photocopy of a document[15] dated May 16,

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[9] *Id.* at 16.

[10] *Id.* at 29.

[11] *Id.* at 6.

[12] *Id.* at 35-37.

[13] *Id.* at 35-36.

[14] *Rollo*, p. 11.

[15] Records, pp. 206-207.

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1921, written in Spanish, which allegedly was the Deed of Sale of the subject lot, with his father as the vendee. No translation of the contents of the document, however, was offered.[16] She further said that after the death of her father, the heirs executed an extrajudicial settlement of his estate. Eventually, she acquired sole ownership over the subject property.[17]

Meanwhile, on July 20, 1999, there being no private oppositor to petitioner's application, the trial court issued an order of general default against the whole world except the government.[18]

On March 2, 2001, the MTC, upon a finding that the subject property was alienable and disposable, and that petitioner sufficiently established her right over the lot in question, granted petitioner's application for registration, thus:

> WHEREFORE, confirming the order of General Default issued by this Court on July 20, 1999, anent the instant application, this Court hereby renders judgment APPROVING the registration of Lot No. 7766-D under Plan CSD-03-010587-D, being a portion of Lot 7766 Cad. 337 Meycauayan Cadastre, located [in] Malhacan, Meycauayan, Bulacan, covered by Tax Declaration No. 06075, in favor of applicant herein Peregrina Mistica.
>
> After this decision shall become final, let the corresponding decree issue.
>
> Furnish copy of this decision, the Land Registration Authority, Quezon City; the Office of the Solicitor General, Makati City; the Land Management Bureau, Manila; and the applicant herein.
>
> SO ORDERED.[19]

With the denial of its motion for reconsideration,[20] respondent filed a Notice of Appeal[21] stating that it was appealing to the

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[16] *Rollo*, p. 12.

[17] *Id.*

[18] Records, pp. 174-175.

[19] Penned by Judge Calixtro O. Adriatico, *id.* at 238.

[20] Records, pp. 240-245.

[21] *Id.* at 250-251.

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Regional Trial Court (RTC). The appeal was given due course by the MTC on July 20, 2001.[22]

Petitioner moved for the dismissal of the appeal on the ground that the case should have been elevated to the CA. She argued that since the MTC heard and decided the case in the exercise of its delegated jurisdiction, the appeal should not have been taken to the RTC.

Acting on petitioner's motion, the RTC held that it indeed had no jurisdiction over the appeal. However, it refused to dismiss the case. It instead forwarded the case to the CA considering that the appeal had already been perfected when the MTC gave due course to petitioner's notice of appeal.[23]

In the assailed decision,[24] the CA set aside the MTC decision and, consequently, dismissed petitioner's application for registration. Contrary to the conclusions of the trial court, the appellate court found that the most important requirement for granting petitioner's application for registration — that the applicant has been in open, continuous, exclusive, and notorious possession and occupation of the subject lot since June 12, 1945 — had not been adequately established.[25] Petitioner's motion for reconsideration was likewise denied on August 18, 2004.[26]

Aggrieved, petitioner comes before the Court raising the sole issue of:

WHETHER OR NOT THE PETITIONER FAILED TO PROVE THAT SHE HAS BEEN [IN] OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF AN ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN UNDER BONA FIDE CLAIM OF OWNERSHIP SINCE JUNE 12, 1945 OR EARLIER.[27]

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[22] *Id.* at 253.

[23] *Id.* at 295-297.

[24] *Supra* note 1.

[25] *Rollo*, pp. 16-18.

[26] *Id.* at 20.

[27] *Id.* at 138.

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We deny the petition.

Section 14(1) of P.D. No. 1529 states:

SEC. 14. *Who may apply.* — The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to the land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

Likewise, Section 48(b) of Commonwealth Act 141, as amended by Section 4 of P.D. No. 1073, provides:

Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance [now Regional Trial Court] of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

In accordance with the aforesaid laws, any person, by himself or through his predecessor-in-interest, who has been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945 or earlier, may file in the proper trial court an application for registration

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of title to land, whether personally or through his duly authorized representative.[28]

Being the applicant for confirmation of imperfect title, petitioner bears the burden of proving that: 1) the land forms part of the alienable and disposable land of the public domain; and 2) she has been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945 or earlier.[29] These the petitioner must prove by no less than clear, positive and convincing evidence.[30]

To prove that she has been in possession of the subject lot, petitioner presented documentary evidence such as the technical description of the subject lot, Certification in Lieu of Lost Surveyor's Certificate, tax declaration of real property, official receipts of realty tax payments, blueprint/machine copies of Subdivision Plan Csd-03-010587-D, joint affidavits of her co-heirs, and Deed of Partition dated July 30, 1980. Moreover, to prove that her predecessors-in-interest had also been in possession thereof, petitioner presented a document written in Spanish which she claimed to be a Deed of Absolute Sale dated May 16, 1921. Lastly, she testified that she acquired the subject lot from her parents who had been the owners and possessors thereof since she was still very young.

As aptly held by the appellate court, these pieces of evidence, taken together, do not suffice to prove that petitioner and her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject lot since

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[28] *Alfredo, Preciosa, Angelita & Crisostomo, all surnamed Buenaventura v. Amparo Pascual & Republic of the Phil.,* G.R. No. 168819, November 27, 2008.

[29] *Id.*; *In Re: Application for Land Registration of Title, Fieldman Agricultural Trading Corporation v. Republic*, G.R. No. 147359, March 28, 2008, 550 SCRA 92, 103; *Republic v. Carrasco*, G.R. No. 143491, December 6, 2006, 510 SCRA 150, 158.

[30] *Alfredo, Preciosa, Angelita & Crisostomo, all surnamed Buenaventura v. Amparo Pascual & Republic of the Phil., supra* note 28.

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June 12, 1945 or earlier. The technical description, Certification in Lieu of Lost Surveyor's Certificate, and blueprint copies of the subdivision plan only prove the identity of the lot sought to be registered. The joint affidavits of her co-heirs, as well as the Deed of Partition, merely show that petitioner acquired the property through succession.

It is true that petitioner presented tax declarations of the subject lot, as well as tax receipts evidencing payment thereof. The Court notes, however, that the tax declaration was effective only in 1998, and that the tax receipts were dated 1997 and 1998. She failed to adduce in evidence any tax declaration over the property under the name of her parents and that the realty taxes for the property had been paid prior to 1998. At best, she offered a copy of a tax declaration which began in 1985 in the name of her co-heirs. While a tax declaration by itself is not adequate to prove ownership, it may serve as sufficient basis for inferring possession.[31] The voluntary declaration of a piece of real property for taxation purposes not only manifests one's sincere and honest desire to obtain title to the property, but also announces an adverse claim against the state and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.[32]

The presentation of a document dated May 16, 1921 which, according to petitioner, was a Deed of Sale of the subject property where her father was the vendee, did not work to her advantage. In the first place, the document was written in Spanish and petitioner did not bother to have the contents thereof translated to English or to any other language that the court could understand. We cannot, therefore, determine if, indeed, the

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[31] *In Re: Application for Land Registration of Title, Fieldman Agricultural Trading Corporation v. Republic*, *supra* note 29, at 104; *Limcoma Multi-Purpose Cooperative v. Republic*, G.R. No. 167652, July 10, 2007, 527 SCRA 233, 245.

[32] *Republic v. Carrasco*, *supra* note 29, at 160; *Republic v. Jacob*, G.R. No. 146874, July 20, 2006, 495 SCRA 529, 539.

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document was a Deed of Sale, and if the subject matter thereof was the property sought to be registered.

Moreover, in her direct testimony, petitioner only stated that her parents were the owners and possessors of the subject lot since she was still very young. She added that, considering that she was 73 years old when she testified (in 1999), her parents could have owned and possessed the property for more than 50 years. Still, her testimony failed to meet the standard required by law. Petitioner failed to state the facts and circumstances evidencing the alleged ownership of the land applied for. To be sure, general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice.[33]

More importantly, we would like to stress that possession alone is not sufficient to acquire title to alienable lands of the public domain because the law requires ***possession and occupation***. Since these words are separated by the conjunction "and," the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive, and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.[34]

With the general statements made by petitioner that she and her predecessors-in-interest have been in possession of the property, and even with the Deed of Absolute Sale allegedly executed in

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[33] *In Re: Application for Land Registration of Title, Fieldman Agricultural Trading Corporation v. Republic*, *supra* note 29, at 104-105; *The Dir., Lands Management Bureau v. Court of Appeals*, 381 Phil. 761, 770 (2000).

[34] *Ong v. Republic*, G.R. No. 175746, March 12, 2008, 548 SCRA 160, 167-168, citing *Republic v. Alconaba*, G.R. No. 155012, April 14, 2004, 427 SCRA 611; *Republic v. Jacob*, *supra* note 32, at 538-539; *Republic v. Enciso*, G.R. No. 160145, November 11, 2005, 474 SCRA 700, 712.

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1921, actual possession of the subject lot was not convincingly established.

In sum, petitioner could not have acquired an imperfect title to the land in question because she has not proven possession openly, continuously and adversely in the concept of an owner since June 12, 1945, the period of possession required by law.[35] Accordingly, the CA did not err in reversing the decision of the trial court and in denying the application for registration of title over the subject lot.

**WHEREFORE,** premises considered, the petition is *DISMISSED* for lack of merit. The April 2, 2004 Decision and August 18, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 75058 are *AFFIRMED*.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr.,* and *Peralta, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 166857. September 11, 2009]

**D.M. WENCESLAO & ASSOCIATES, INC.,** *petitioner, vs.* **FREYSSINET PHILIPPINES, INC.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; ISSUES NOT RAISED IN THE PLEADINGS, WHEN MAY BE CONSIDERED BY THE COURT; CONDITIONS; CASE AT BAR. —** In *Bank of America v. American Realty Corporation,* we stated: When

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[35] *Republic v. Carrasco, supra* note 29, at 164.