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their interest and taking into account the services already rendered by respondent to petitioner, the sum of ₱30,000.00 as expenses of litigation and cost of suit would be reasonable under the premises.

WHEREFORE, the Decision appealed from is *AFFIRMED WITH MODIFICATIONS* to the effect that the attorney's fees awarded to respondent is *REDUCED* to ₱500,000.00, the legal interest of 2% on the amount due to respondent is *DELETED*, and the award of litigation expenses is *REDUCED* to ₱30,000.00.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Callejo, Sr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 160990. September 11, 2006]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES RICARDO B. ENRIQUEZ and ELIZA M. ENRIQUEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT, NOT PROPER, EXCEPTIONS.** — The issues, notably, are questions of fact that petitioner had already previously raised in its appeal before the CA. The general rule is that questions of fact are beyond the province of Rule 45 of the Rules of Court. Said rule, however, admits of certain exceptions, to wit: (1) when the factual findings of the Court of Appeals and the trial court are contradictory; (2) when the findings are grounded entirely on speculations, surmises, or conjectures; (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or

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impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) *when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;* (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

2. **CIVIL LAW; LAND TITLES; REGISTRATION OF TITLE OVER A PARCEL OF LAND; REQUIREMENTS; SUBMISSION IN EVIDENCE OF THE ORIGINAL TRACING CLOTH PLAN DULY APPROVED BY THE BUREAU OF LANDS; SUBSTANTIAL COMPLIANCE, ALLOWED.** — Before one can register his title over a parcel of land, the applicant must show that (a) he, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership since June 12, 1945 or earlier; and (b) the land subject of the application is alienable and disposable land of the public domain. One of the mandatory requirements in applications of original registration of land is the submission in evidence of the original tracing cloth plan or the "*sepia* copy" (*Diazo* Polyester Film), duly approved by the Bureau of Lands. This is to establish the true identity of the land to ensure that it does not overlap a parcel of land or a portion thereof already covered by a previous land registration, and to forestall the possibility that it will be overlapped by a subsequent registration of any adjoining land. Failure to comply with this requirement is fatal to petitioner's application for registration. Nevertheless, in several cases, the Court allowed substantial compliance with this rule. In *Recto v. Republic of the Philippines* x x x. In *Republic of the Philippines v. Hubilla. x x x.* In the present case, there is no question that respondents did not submit the original of the tracing cloth plan of *Lots 1711, Pls-488-D and Psu-05-006497-D.* Applying the exception set forth in the *Hubilla*

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and *Recto cases*, the CA ruled that the same may be dispensed with as there are on record the blueprint copies of the properties and "other evidences," which sufficiently establish the nature, identity, location and extent of the subject properties.

3. **ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE WHERE THERE EXISTS A SIGNIFICANT DISCREPANCY IN THE AREA CREATING DOUBT THEREOF AND THE SAME IS NOT SUFFICIENTLY EXPLAINED.** — Petitioner, however, insists that there exists a material discrepancy in the area of Parcel 2. The Court went over the records of this case and indeed, as borne by respondents' own evidence, there exists a significant discrepancy in the area of *Lot Psu-05-006497-D* creating a doubt as to the actual area, such that the exception to the rule on the presentation of the original tracing cloth plan cannot be applied. x x x Respondents failed to satisfactorily explain the reason for the difference in the area. What respondent Ricardo Enriquez merely said on this score was: "*When the relocation survey was conducted and the exact boundaries were determined, it was found out that the area is actually 297 and not 250.*" Such bare testimony does not suffice to clarify the difference in the area, as shown in the pertinent documents on record. Respondent Enriquez did not conduct the survey, and it does not appear that he has technical know-how in this regard. It could have been different had the original tracing cloth plan been submitted in evidence, since it is the best evidence to identify a piece of land for registration purposes, or at the very least, the geodetic engineer who surveyed the property should have testified with regard to the increase in the area. It should be stressed that a person who seeks registration of title to a piece of land must prove the claim by clear and convincing evidence, and is duty bound to identify sufficiently and satisfactorily the property. Otherwise stated, all facts must indicate that no other person, including the government, will be prejudiced by the adjudication of the land to the applicant.

4. **ID.; ID.; ID.; ID.; CONCEPT OF POSSESSION AND OCCUPATION REFERRED TO IN CASES OF REGISTRATION OF TITLE, ELUCIDATED.** — In *Republic v. Jacob*, the Court explained the concept of possession and occupation referred to in cases of registration of title, *viz.:* Indeed, the law speaks of "*possession and occupation.*" Possession is broader than

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occupation because it includes constructive possession. Unless, therefore, the law adds the word "occupation," it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words "continuous," "exclusive" and "notorious," the word "occupation" seems to highlight the facts that for an applicant to qualify, her possession of the property must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion of such a nature as a party would naturally exercise over her own property. A mere casual cultivation of portions of land by the claimant does not constitute sufficient basis for a claim of ownership. Such possession is not exclusive and notorious as it gives rise to a presumptive grant from the State. The applicant is burdened to offer proof of specific acts of ownership to substantiate the claim over the land. The good faith of the person consists in the reasonable belief that the person from whom she received the property was the owner thereof and could transfer ownership.

5. **ID.; ID.; ID.; TAX DECLARATIONS AND REALTY TAX PAYMENT; GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF OWNER.** — Records show that as early as 1963, Cootauco has already declared *Lot 1711, Pls-488-D* for taxation purposes, and realty taxes have been paid thereon since 1964. It has been ruled that while tax declarations and realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Archimedes O. Yanto for respondents.

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DECISION

AUSTRIA-MARTINEZ, *J.*:

For resolution by the Court is a petition for review under Rule 45 of the Rules of Court, filed by the Republic of the Philippines questioning the Decision[1] dated November 28, 2003 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 68973. The assailed Decision affirmed the Decision of the Regional Trial Court (RTC) of Daet, Camarines Norte, Branch 39, granting the application for registration of title of land filed by respondents.

Respondents filed their verified petition for confirmation and registration of title to two parcels of land located in Gahonon, Daet, Camarines Norte on January 16, 1997.[2] One parcel, *Lot 1711, Pls-488-D*, consists of 455 square meters. The other parcel (hereafter referred to as "Parcel 2"), described in *Psu-05-006497-D*, contains 297 square meters.

Petitioner, through the Director of Lands, filed an Opposition on the grounds that respondents or their predecessors-in-interest have not been in continuous, exclusive, and notorious possession of the property since June 12, 1945 or prior thereto; that respondents' evidence is not competent or sufficient to establish their claim; and that the parcel of land applied for is a portion of the public domain.[3]

On September 28, 1998, the RTC rendered its Decision with the following dispositive portion:

> WHEREFORE, title of the applicants to the 455-square meter parcel of land described on Plan-051603-0022344 (Exh. "M") and the 297-square meter parcel of land described on plan Psu-05-006497-D (Exh.

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[1] Associate Justice Bienvenido L. Reyes, *ponente*, with Associate Justices Conrado M. Vasquez, Jr. and Arsenio J. Magpale, concurring; CA *rollo*, pp. 86-95.

[2] Records, pp. 1-3.

[3] *Id.* at 28-29.

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"M-1") is hereby confirmed and the same is ordered registered in the name of spouses Ricardo B. Enriquez and Eliza M. Enriquez, both of legal age, Filipino citizens and residents of Batobalani, Paracale, Camarines Norte.

Once this decision shall have become final, let an order for the issuance of decree be issued.

SO ORDERED.[4]

Petitioner filed an appeal with the CA on grounds of lack of jurisdiction due to respondents' failure to present the original tracing cloth plan of the subject lots, and respondents' failure to prove open, continuous, exclusive, and adverse possession for more than 30 years. Finding no error, the CA denied the appeal and affirmed the RTC Decision in the assailed Decision dated November 28, 2003.[5]

Hence, herein petition based on the following grounds:

I

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT WHICH GRANTED THE APPLICATION FOR LAND REGISTRATION, DESPITE THE FACT THAT THE TRIAL COURT HAS NOT ACQUIRED JURISDICTION TO PROCEED WITH THE CASE FOR FAILURE OF RESPONDENTS TO PRESENT THE ORIGINAL TRACING CLOTH PLAN OR THE DIAZO POLYESTER FILM.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT GRANTING THE APPLICATION FOR LAND REGISTRATION DESPITE THE FAILURE OF RESPONDENTS TO PROVE THAT THEY AND THEIR PREDECESSORS-IN-INTEREST HAD BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION OF THE SUBJECT LOTS IN THE CONCEPT OF OWNERS FOR AT LEAST THIRTY YEARS.[6]

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[4] *Id.* at 119.

[5] CA *rollo*, pp. 94-95.

[6] *Rollo*, p. 32.

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These issues, notably, are questions of fact that petitioner had already previously raised in its appeal before the CA. The general rule is that questions of fact are beyond the province of Rule 45 of the Rules of Court.[7] Said rule, however, admits of certain exceptions, to wit:

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;

(2) when the findings are grounded entirely on speculations, surmises, or conjectures;

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) **when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;**

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[8] (Emphasis supplied)

After going over the evidence extant in the record of this case, the Court finds that the CA failed to notice a relevant fact which, if properly considered, will justify a different

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[7] *Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.*, G.R. No. 151963, September 9, 2004, 438 SCRA 51, 76.

[8] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168-1169 (1997).

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conclusion, thus necessitating a review of the case. Particularly, the Court is referring to the fact that there exists a material discrepancy in the technical description of Parcel 2 applied for as will be discussed forthwith.

Before one can register his title over a parcel of land, the applicant must show that (a) he, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership since June 12, 1945 or earlier; and (b) the land subject of the application is alienable and disposable land of the public domain.[9]

One of the mandatory requirements in applications of original registration of land is the submission in evidence of the original tracing cloth plan or the "*sepia* copy" (*Diazo* Polyester Film), duly approved by the Bureau of Lands. This is to establish the true identity of the land to ensure that it does not overlap a parcel of land or a portion thereof already covered by a previous land registration, and to forestall the possibility that it will be overlapped by a subsequent registration of any adjoining land. Failure to comply with this requirement is fatal to petitioner's application for registration.[10]

Nevertheless, in several cases, the Court allowed substantial compliance with this rule. In *Recto v. Republic of the Philippines*,[11] this Court held that blueprint copies of the original tracing cloth plan from the Bureau of Lands and other evidence could also provide sufficient identification to identify a piece of land for registration purposes, as the property was sufficiently identified by: 1) the blueprint copy of the plan and technical description which were both approved by the Land Management Services of the Department of Environment and Natural Resources (DENR); and 2) the report of the Land Management

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[9] Section 14, P.D. No. 1529; Section 48(b), Commonwealth Act No. 141, as amended by Section 4, P.D. No. 1073; *Republic of the Philippines v. Lao*, 453 Phil. 189, 195 (2003).

[10] *Del Rosario v. Republic of the Philippines*, 432 Phil. 824, 834 (2002).

[11] G.R. No. 160421, October 4, 2004, 440 SCRA 79, 87, 89.

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Sector stating that the subject property is not a portion of, nor identical to any previously approved isolated survey. The applicants in the *Recto case* also submitted a certified true copy of the original tracing cloth plan to the CA as well as a certification from the Land Registration Authority attesting that the original plan in *diazo* polyester film was on file.

In *Republic of the Philippines v. Hubilla*,[12] the Court also deemed as substantial compliance the submission of the following in lieu of the original tracing cloth plan, to wit: 1) a blueprint copy of the subdivision plan approved by the Director of Lands; 2) a technical description approved by the Land Management Bureau of the DENR; 3) a certification from the DENR Community Environment and Natural Resources Office (CENRO) which states that the Property has not been forfeited for non-payment of real estate taxes, is entirely within the alienable and disposable zone as of December 31, 1925, has not been previously titled and is not covered by any previous public land application; and 4) a report of the Land Management Bureau stating that the Property is not recorded in their lot and plan index cards as being subject of a previous public land application. The applicants also filed a motion to admit original tracing cloth plan with the Court of Appeals during the pendency of the appeal and attached thereto the original plan, which the Court noted as the same as the blueprint subdivision plan offered as evidence before the trial court.

In the present case, there is no question that respondents did not submit the original of the tracing cloth plan of *Lots 1711, Pls-488-D* and *Psu-05-006497-D.* Applying the exception, the CA ruled that the same may be dispensed with as there are on record the blueprint copies of the properties and "other evidences," which sufficiently establish the nature, identity, location and extent of the subject properties. The CA also ruled that the case of *Director of Lands v. Tesalona*,[13] cited by petitioner, does not apply in this case since there is no

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[12] G.R. No. 157683, February 11, 2005, 451 SCRA 181, 185.

[13] G.R. No. 66130, September 8, 1994, 236 SCRA 336.

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discrepancy in the area of the land as stated in the application and in the blue print.

Petitioner, however, insists that there exists a material discrepancy in the area of Parcel 2.

The Court went over the records of this case and indeed, as borne by respondents' own evidence, there exists a significant discrepancy in the area of *Lot Psu-05-006497-D* creating a doubt as to the actual area, such that the exception to the rule on the presentation of the original tracing cloth plan cannot be applied.

In the Deed of Absolute Sale dated December 2, 1994 between Rosalinda Oloya and respondents, Parcel 2 was described as follows:

> Parcel 2 — A parcel of land situated at Gahonon, Daet, Camarines Norte, Philippines. Bounded on the north by irrigation canal; on the South lot owned by Mrs. of Tomas Cootauco; on the West lot No. 1710 - ____ and on the East lo [sic] No. 1710 ____. Declared under Tax Decl. No. 018-0991 **containing an area of 250 Sq. m more or less.**[14]

This is confirmed in the Provincial Assessor's Property Field Appraisal & Assessment Sheet for the years 1993[15] and 1994,[16] and the Declaration of Real Property in the names of Rosalinda Oloya and Tomas Cootauco, although the boundaries set therein were as follows:

Northeast:	Lot 1711
Northwest:	Road lot
Southeast:	Road lot
Southwest:	National road

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[14] Exhibit "J", records, p. 17.

[15] Exhibit "U-2", *id.* at 106.

[16] Exhibit "U-3", *id.* at 105.

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Meanwhile, in the 1996 blue print copy of the survey plan[17] and the technical description issued by the Lands Management Services,[18] Parcel 2 already contained an area of 297 square meters, and bounded as follows:

Southwest:	National Road
Northwest:	property of Samuel Magana
Northeast:	Lot 1711, Pls 488-D
Southeast	property of Emeteria Abodago

Moreover, the Court notes that in a Certification dated October 15, 1992, issued by the Office of the CENRO, Daet, Camarines Norte, there already exists a previous survey plan over the same property but which measures 250 square meters. It was stated therein: "THIS IS TO CERTIFY that per records filed in this Office, shows that the parcel of land with an area of 250 square meters as surveyed by Engr. Virgilio F. Jimenez for Tomas Cootauco, located at Gahonon, Daet, Camarines Norte x x x."[19]

Respondents failed to satisfactorily explain the reason for the difference in the area. What respondent Ricardo Enriquez merely said on this score was: "*When the relocation survey was conducted and the exact boundaries were determined, it was found out that the area is actually 297 and not 250.*"[20] Such bare testimony does not suffice to clarify the difference in the area, as shown in the pertinent documents on record. Respondent Enriquez did not conduct the survey, and it does not appear that he has technical know-how in this regard. It could have been different had the original tracing cloth plan been submitted in evidence, since it is the best evidence to identify a piece of land for registration purposes,[21] or at the

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[17] Exhibit "M-1", *id.* at 4.

[18] Exhibit "N", *id.* at 5.

[19] *Id.* at 65.

[20] TSN, October 29, 1997, p. 7.

[21] *Recto v. Republic of the Philippines, supra* note 11 at 87.

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very least, the geodetic engineer who surveyed the property should have testified with regard to the increase in the area.

It should be stressed that a person who seeks registration of title to a piece of land must prove the claim by clear and convincing evidence, and is duty bound to identify sufficiently and satisfactorily the property. Otherwise stated, all facts must indicate that no other person, including the government, will be prejudiced by the adjudication of the land to the applicant.[22]

Given respondents' failure to identify with certainty the area of Parcel 2 as described in *Lot Psu-05-006497-D*, the RTC should have therefore denied the application for registration of title over said property.

The foregoing conclusion, however, does not hold true with regard to *Lot 1711, Pls-488-D.* All the evidence on record sufficiently identified the property as the one applied for by respondents, and containing the corresponding metes and bounds as well as area. Consequently, the original tracing cloth plan need not be presented in evidence, applying the exception set forth in the *Hubilla*[23] and *Recto*[24] *cases.*

On the issue of open, continuous, exclusive and notorious possession of the subject lots, the Court will settle the issue only *vis-à-vis Lot 1711, Pls-488-D*, since as earlier stated, the application for the registration of title over Parcel 2 should be denied.

In *Republic v. Jacob*,[25] the Court explained the concept of possession and occupation referred to in cases of registration of title, *viz.*:

Indeed, the law speaks of "*possession and occupation.*" Possession is broader than occupation because it includes

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[22] *Diaz-Enriquez v. Republic of the Philippines*, G.R. No. 141031, August 31, 2004, 437 SCRA 311, 320-321.

[23] *Republic of the Philippines v. Hubilla, supra* note 12.

[24] *Recto v. Republic of the Philippines, supra* note 11.

[25] G.R. No. 146874, July 20, 2006.

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constructive possession. Unless, therefore, the law adds the word "occupation," it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words "continuous," "exclusive" and "notorious," the word "occupation" seems to highlight the facts that for an applicant to qualify, her possession of the property must not be a mere fiction.

Actual possession of a land consists in the manifestation of acts of dominion of such a nature as a party would naturally exercise over her own property. A mere casual cultivation of portions of land by the claimant does not constitute sufficient basis for a claim of ownership. Such possession is not exclusive and notorious as it gives rise to a presumptive grant from the State. The applicant is burdened to offer proof of specific acts of ownership to substantiate the claim over the land. The good faith of the person consists in the reasonable belief that the person from whom she received the property was the owner thereof and could transfer ownership.

Records bear out that *Lot 1711, Pls-488-D* was originally part of a 707-square meter property owned by Concepcion Pabico. In an *Escritura de Compra Venta* dated April 23, 1941, the property was sold to Tomas Cootauco.[26] After the death of Cootauco, his heirs sold the property, which was already partitioned into to two portions, Parcel 1 consisting of 455 square meters and Parcel 2 consisting of 250 square meters, to Rosalinda Buñag Oloya by virtue of a "Deed of Absolute Sale" dated October 22, 1992.[27] The sale was confirmed in an "Extra-Judicial Settlement of Estate with Confirmation of Sale" executed on October 22, 1992.[28] Oloya, in turn, sold these two parcels of land to respondents in a "Deed of Absolute Sale" dated December 2, 1994.[29]

Records also show that as early as 1963, Cootauco has already declared *Lot 1711, Pls-488-D* for taxation purposes,[30] and realty

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[26] Records, pp. 86-87.

[27] Exhibit "K", *id.* at 84.

[28] *Id.* at 85.

[29] *Id.* at 17.

[30] *Id.* at 102.

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taxes have been paid thereon since 1964.[31] It has been ruled that while tax declarations and realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.[32]

Given the sufficiency of proof of respondents' compliance with the legal requirements, in that *Lot 1711, Pls-488-D* has been identified with certainty, and that respondents and their predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same since 1963, or for 34 years, the application for the registration of title of *Lot 1711, Pls-488-D* was therefore correctly granted by the RTC and affirmed by the CA.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision dated November 28, 2003 of the Court of Appeals in CA-G.R. CV No. 68973 affirming the Decision of the Regional Trial Court is *AFFIRMED* with *MODIFICATION* to the effect that the Decision of the Regional Trial Court dated September 28, 1998 is *MODIFIED* whereby the application for original registration of the 297-square meter parcel of land described in plan Psu-05-006497-D is *DENIED*.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

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[31] *Id.* at 88.

[32] *Republic of the Philippines v. Court of Appeals*, G.R. No. 144057, January 17, 2005, 448 SCRA 442, 454.