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shall be within the range of *prision mayor* as a minimum to *reclusion temporal* in its medium period as the maximum. The range of *prision mayor* is from 6 years and 1 day to 12 years. The span of *reclusion temporal,* medium, is from 14 years, 8 months and 1 day to 17 years and 4 months.

**WHEREFORE**, the assailed *DECISION* of the Regional Trial Court of Masbate, Masbate, Branch 48, in Criminal Case No. 5132, is hereby *MODIFIED*. Appellants Oscar Oliva and Noli Salcedo are hereby found *GUILTY* of *HOMICIDE* and sentenced to suffer a prison term of 10 years of the medium period of *prision mayor*, as minimum, to 15 years and 10 months and 1 day of the medium period of *reclusion temporal,* as maximum, with accessory penalties provided by law, to indemnify the heirs of the deceased Jacinto Magbojos Jr. in the amount of ₱50,000.00. and to pay the costs.

**SO ORDERED.**

*Bellosillo (Chairman), Mendoza, Buena,* and *De Leon, Jr., JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 116372. January 18, 2001]

**REPUBLIC OF THE PHILIPPINES represented by the DIRECTOR OF LANDS,** *petitioner, vs.* **COURT OF APPEALS and ROMEO DIVINAFLOR,** *respondents.*

**SYNOPSIS**

The property in question is undisputably an alienable and disposable tract of public land. Respondent Divinaflor claimed ownership thereof by virtue of possession for over 30 years. The Director of Lands, however, asserted that the claim has

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not been sufficiently supported by evidence. Resolving these conflicting allegations, the trial court ruled that Divinaflor, together with his predecessor-in-interest, has been in open possession as owner of the subject lot since 1939. This was affirmed by the Court of Appeals.

The issue in this petition for review is: Whether or not Divinaflor has acquired registrable title over the subject property. The Court ruled that the question pertains to factual matters which the Court is not duty bound to assess in the absence of a most compelling reason. Thus, finding no rationale to reverse the conclusion reached by the trial court and the Court of Appeals, the petition was denied and the appealed decision was affirmed.

## SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED.** — Denial of the instant petition is proper in light of the well-entrenched doctrine upholding the factual findings of the trial court when affirmed by the Court of Appeals. It is likewise very basic that only errors of law and not of facts are reviewable by this Court in petitions for review on *certiorari* under Rule 45, which is the very rule relied upon by petitioner.

2. **ID.; APPEAL TO THE SUPREME COURT; LIMITED ONLY TO ERRORS OF LAW.** — While the sole issue as so worded appears to raise an error of law, the arguments that follow in support thereof pertain to factual issues. In effect, petitioner would have us analyze or weigh all over again the evidence presented in the courts *a quo* in complete disregard of the well-settled rule that "the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. This Court is not bound to analyze and weigh all over again the evidence already considered in the proceedings below." Indeed, it is not the function of the Supreme Court to assess and evaluate all over again the evidence, testimonial and evidentiary, adduced by the parties particularly where the findings of both the trial court and the appellate court on the matter coincide.

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**3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.** — The issue of credibility is unavailing considering that the judge below is in a better position to pass judgment on the issue having personally heard the witnesses testify and observed their deportment and manner of testifying. Being in a better position to observe the witnesses, the trial court's appreciation of the witness' testimony, truthfulness, honesty, and candor, deserves the highest respect. Further, it is axiomatic that a witness' "interest in the outcome of a case shall not be a ground for disqualification, and that such an interest, if shown, while perhaps, indicating the need for caution in considering the witness' testimony, does not of itself operate to reduce his credit; indeed, his testimony must be judged on its own merits, and if ** (it) is otherwise clear and convincing and not destroyed by other evidence on record, it may be relied upon." In this case, both the trial court and the Court of Appeals found Divinaflor's testimony to be convincing, a finding with which, in the premises, this Court will not and cannot take issue.

**4. ID.; ID.; TESTIMONIAL EVIDENCE; INCOMPETENCY OF WITNESS; WAIVED BY FAILURE TO RAISE TIMELY OBJECTION THERETO.** — The issue of incompetency of Divinaflor to testify on the possession of his predecessor-in-interest since 1939 is likewise unavailing and must be rejected. A timely objection was never made by petitioner on the ground of incompetency of Divinaflor to testify on this matter at any stage of the proceedings. Any objection to the admissibility of evidence should be made at the time such evidence is offered or as soon thereafter as the objection to its admissibility becomes apparent, otherwise the objection will be considered waived and such evidence will form part of the records of the case as competent and admissible evidence. The failure of petitioner to interpose a timely objection to the presentation of Divinaflor's testimony results in the waiver of any objection to the admissibility thereof and he is therefore barred from raising said issue on appeal.

**5. ID.; ID.; WITNESSES; QUALIFICATION OF CHILD WITNESS.** — A person is competent to be a witness if (a) he is capable of perceiving at the time of the occurrence of the fact and (b) he can make his perception known. It is well-established that any child regardless of age, can be a competent witness if he

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can perceive, and perceiving can make known his perception to others and that he is capable of relating truthfully facts for which he is examined. The requirements of a child's competence as a witness are: (a) capacity of observation; (b) capacity of recollection; and (c) capacity of communication. There is no showing that as a child, claimant did not possess the foregoing qualifications. It is not necessary that a witness' knowledge of the fact to which he testifies was obtained in adulthood. He may have first acquired knowledge of the fact during childhood, that is at the age of four, which knowledge was reinforced through the years, up until he testified in court in 1990. There is reason to reject petitioner's claim that Divinaflor is incompetent to testify regarding Listana's possession since it appears undisputed that Divinaflor grew up in Maramba, Oas, Albay, and had occasion to see Listana possessing the land.

6. **CIVIL LAW; REAL PROPERTY; POSSESSION; EARLIER POSSESSION NOT NEGATED BY BELATED DECLARATION OF PROPERTY FOR TAX PURPOSES.** — The belated declaration of the property for tax purposes does not necessarily lead to the conclusion that the predecessors were not in possession of the land as required by law since 1945. Petitioner capitalizes on the fact that the earliest tax declaration presented took effect only in 1980 while the certificate of tax payment is dated 1990. While this Court has held in a long line of cases that tax declarations or tax receipts are good *indicia* of possession in the concept of owner, it does not necessarily follow that belated declaration of the same for tax purposes negates the fact of possession, especially in the instant case where there are no other persons claiming any interest in Lot 10739.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.

**D E C I S I O N**

**GONZAGA-REYES, *J.*:**

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the decision of the Court of Appeals dated February 8, 1994

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in CA-G.R. CV No. 29578 entitled *"The Director of Lands, Petitioner-Appellant v. Romeo Divinaflor, Claimant-Appellee"*[1] which affirmed the decision[2] of the Regional Trial Court of Ligao, Albay, Branch 12, rendered in favor of private respondent Romeo Divinaflor.

This case stems from Cadastral Case No. N-11-LV initiated, pursuant to law, by the Director of Lands, as petitioner before the Regional Trial Court of Ligao, Albay (Branch 12). In due time, Romeo Divinaflor filed his answer to the petition relative to Lot No. 10739 with an area of 10,775 square meters situated in Oas, Albay, claiming ownership of said lot by virtue of possession for over thirty years. The facts, as found by the trial court and affirmed by the Court of Appeals, are as follows:

"Lot 10739 of the cadastral survey of Oas, Albay is one of the parcels of land subject of these cadastral proceedings. When this case was called for initial hearing, nobody offered any opposition. Whereupon, an order of general default against the whole world was issued. Claimant was allowed to present his evidence.

Lot 10739 is one of the uncontested lots. It is a parcel of riceland situated at Maramba, Oas, Albay containing an area of 10,775 square meters bounded on the north by Lots 10738 & 10737; on the East by Lot 10738; on the South by Lot 10716; and on the West by Lot 10716. Originally, the land was owned by Marcial Listana who began possession and occupying the same in the concept of owner, openly, continuously, adversely, notoriously and exclusively since 1939. He planted palay and harvested about 60 cavans of palay every harvest season. He declared the land in his name under Tax Dec. No. 1987 (Exh. 1). On May 21, 1973, claimant acquired ownership of the land by means of deed of absolute sale (Exh. 2). He caused the same to be declared in his name under Tax Dec. No. 1442 (Exh. 3). There was another reassessment under Tax Dec. No. 35 (Exh. 3-a). He continued planting on the land and all the products are used for the benefit of his family.

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[1] Penned by Associate Justice Ricardo J. Francisco, with Justices Serafin V.C. Guingona and Eubolo G. Verzola, concurring; *Rollo*, pp. 32-37.

[2] Penned by Judge Rafael P. Santelices. *Rollo*, pp. 29-30.

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The land was surveyed in the name of the previous owner per certification of the CENRO (Exh. 4). The cadastral survey costs had been paid in the amount of ₱72.08 under Official Receipt No. 50652483 (Exh. 5) and the certification thereof (Exh. 5-a). All the realty taxes has likewise been paid up to the current year per Official Receipt No. 6422679 (Exh. 6) together with the certification of the Municipal Treasurer of Oas, Albay (Exh. 6-A).

There are no liens or encumbrances and neither are there persons claiming adverse ownership and possession of the land. The lot does not infringe the public road, river or stream. It is not part of a military reservation, public park, watershed or the government's forest zone. The lot has not been utilized as a bond in civil or criminal cases or as a collateral for a loan in any banking institution. There is no pending petition for its registration under Act 496 known as the Land Registration Act or an application for the issuance of free patent with the Community Environment and Natural Resources Office (CENRO). Claimant is not legally disqualified from owning disposable property of the public domain."[3]

Finding that the claimant, together with his predecessor-in-interest, has "satisfactorily possessed and occupied this land in the concept of owner, openly, continuously, adversely, notoriously and exclusively since 1939 very much earlier to June 12, 1945," the court ordered the registration and confirmation of Lot 10739 in the name of the Spouses Romeo Divinaflor and Nenita Radan.

The Director of Lands appealed to the Court of Appeals alleging that the finding of the trial court that claimant-appellee and his predecessor-in-interest have possessed Lot 10739 since 1939 is not sufficiently supported by the evidence. The Director contended that the earliest tax declaration presented by claimant took effect only in 1980 and the certificate of real estate tax payment is dated 1990. It was further contended that the testimony of Romeo Divinaflor was largely self-serving, he being the applicant.

The Court of Appeals affirmed the judgment appealed from. It ruled:

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[3] *Rollo*, pp. 32-33.

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"To our mind, it is not necessary, in cases of this nature, to present tax declarations and tax receipts of the land in question. All that the law mandates is proof of 'open, continuous, peaceful and adverse possession' which appellee has convincingly established. Repeatedly, the fact of possession is hammered into the record by appellee's testimony on cross-examination by appellant. Thus:

ASST. PROV'L. PROS. CRISOSTOMO:

Q: You said that you bought this land from Marcial Listana, and you are referring us to this deed of sale?

WITNESS:

A: Yes, sir.

Q: This land is located at Maramba?
A: Yes, sir.

Q: Since when did Marcial Listana begin possessing this land?
A: Since 1939.

Q: What was Marcial Listana doing on the land?
A: He was planting palay and sometimes corn.

Q: In what concept was he possessing the land?
A: In the concept of owner, openly, continuously, adversely, notoriously and exclusively.

Q: Do you know whether there are disputes involving the boundaries of the land?
A: No, sir.

Q: Are there also persons claiming adverse ownership and possession of the land?
A: No, sir.

Q: Does this land encroach any road, river or stream?
A: No, sir.

Q: Is this part of a military reservation, public park, watershed or the government's forest zone?
A: No, sir.

Q: Have you paid all the taxes on the land?
A: Yes, sir.

Q: What about the cadastral costs?
A: I also paid the same.

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Q: What do you do with the land now?
A: I planted palay during rainy season.

Q: How many cavans of palay do you harvest every agricultural season?
A: I get 40 cavans of palay every harvest season but sometimes more and sometimes less, during summer month I plant corn and harvest about 8 cavans of unhusked corn.

Q: If and when this land will be titled, in whose name would you like the title to be?
A: In our names, my wife and myself.

PROSECUTOR CRISOSTOMO:

That is all."[4]

"While it is true that tax declarations and tax receipts, may be considered as evidence of a claim of ownership, and when taken in connection with possession, it may be valuable in support of one's title by prescription. Nevertheless, the mere payment of taxes does not confer nor prove it. (*Viernes, et al., vs. Agpaoa*, 41 Phil. 286. See also *Director of Lands vs. Court of Appeals*, 133 SCRA 701).

> The omission to declare the land in question for taxation purposes at the inception of the tax system in 1901 of this country does not destroy the continuous and adverse possession under claim of ownership of applicant's predecessors in interest. *Fontanilla vs. Director of Lands, et al., CA-G.R. No. 8371-R, Aug. 4, 1952.*

Finally, appellant asseverates that the testimony of appellee is insufficient to prove possession for being self-serving, he being one of the applicants. We remind appellant on this score that self-serving evidence comes into play only when such is made by the party out of court and excludes testimony which a party gives as a witness at the trial. (See *N.D.C. vs. Workmen's Compensation, et al.*, 19 SCRA 861; 31 C.J.S. 952)."[5]

Motion for reconsideration of the above-mentioned decision having been denied, the Director of Lands has brought the instant petition raising the sole issue of —

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[4] Transcript of Stenographic Notes dated July 24, 1990, pp. 5-6.

[5] *Rollo*, pp. 34-36.

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WHETHER OR NOT THE RESPONDENT HAS ACQUIRED REGISTRABLE TITLE OVER THE SUBJECT PROPERTY.

Petitioner Director of Lands assails the decision of the Court of Appeals on the ground that the law, as presently phrased, requires that possession of lands of the public domain must be from June 12, 1945 or earlier, for the same to be acquired through judicial confirmation of imperfect title. Petitioner argues that Divinaflor failed to adduce sufficient evidence to prove possession of the land in question since June 12, 1945 for the following reasons: (1) Divinaflor failed to present sufficient proof that his predecessor-in-interest Marcial Listana has possessed the lot since 1939; and (2) Divinaflor is incompetent to testify on his predecessor's possession since 1939 considering he was born only in 1941, and in 1945, he was only 4 years old.

We find no reversible error in the assailed judgment. Denial of the instant petition is proper in light of the well-entrenched doctrine upholding the factual findings of the trial court when affirmed by the Court of Appeals.[6] It is likewise very basic that only errors of law and not of facts are reviewable by this Court in petitions for review on *certiorari* under Rule 45, which is the very rule relied upon by petitioner.[7]

While the sole issue as so worded appears to raise an error of law, the arguments that follow in support thereof pertain to factual issues. In effect, petitioner would have us analyze or weigh all over again the evidence presented in the courts *a quo* in complete disregard of the well-settled rule that "the jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. This Court is not bound to analyze and weigh all over again the evidence already considered in the proceedings below."[8] Indeed, it is not the function of the

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[6] *Castillo vs. Court of Appeals*, 260 SCRA 374 (1996).

[7] *De la Cruz vs. Court of Appeals*, 265 SCRA 299(1996).

[8] *Ibid.*

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Supreme Court to assess and evaluate all over again the evidence, testimonial and evidentiary, adduced by the parties particularly where the findings of both the trial court and the appellate court on the matter coincide.[9]

This Court has held in *Republic vs. Doldol*[10] that, originally, "Section 48(b) of C.A. No. 141 provided for possession and occupation of lands of the public domain since July 26, 1894. This was superseded by R.A. No. 1942[11] which provided for a simple thirty-year prescriptive period of occupation by an applicant for judicial confirmation of imperfect title. The same, however, has already been amended by Presidential Decree No. 1073, approved on January 25, 1977." As amended Section 48(b) now reads:

"(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 or ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title, except when prevented by wars or *force majeure*. Those 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."

Interpreting the above-quoted provision, the Court stated in *Republic vs. Court of Appeals*[12] that the Public Land Act requires that the applicant must prove the following:

"(a) that the land is alienable public land and (b) that his open, continuous, exclusive and notorious possession and occupation of the same must either be since time immemorial or for the period prescribed in the Public Land Act. When the conditions set by law are complied with, the possessor of the land, by operation of law,

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[9] *South Sea Surety and Insurance Co., Inc. vs. Court of Appeals,* 244 SCRA 744 (1995).

[10] 295 SCRA 359 (1998).

[11] Approved on June 22, 1957.

[12] 235 SCRA 567(1994).

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acquires a right to a grant, a government grant, without the necessity of a certificate of title being issued."

There is no dispute that the subject lot is an alienable and disposable tract of public land. Since claimant Romeo Divinaflor acquired ownership of Lot 10739 from Marcial Listana by deed of absolute sale dated May 21, 1973,[13] the pivotal issue is whether his predecessor-in-interest Marcial Listana has been in possession of the land since June 12, 1945 under a *bona fide* claim of ownership.

The determination of whether claimants were in open, continuous, exclusive and notorious possession under a *bona fide* claim of ownership since 1945 as required by law, is a question of fact[14] which was resolved affirmatively by the trial court and the Court of Appeals. Such factual finding will not be reversed on appeal except for the most compelling reasons. None has been adduced in the case at bar.

Petitioner questions the credibility of claimant Divinaflor who testified on the possession of Marcial Listana for the period required by law. The issue of credibility is unavailing considering that the judge below is in a better position to pass judgment on the issue having personally heard the witnesses testify and observed their deportment and manner of testifying.[15] Being in a better position to observe the witnesses, the trial court's appreciation of the witness' testimony, truthfulness, honesty, and candor, deserves the highest respect.[16]

Further, it is axiomatic that a witness' "interest in the outcome of a case shall not be a ground for disqualification, and that such an interest, if shown, while perhaps, indicating the need for caution in considering the witness' testimony, does not of itself operate to reduce his credit; indeed, his testimony must be

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[13] Exhibit "2"; Original Records, p. 12.

[14] *Director of Lands vs. Court of Appeals*, 308 SCRA 317 (1999).

[15] *Jarco Marketing Corporation vs. Court of Appeals*, 321 SCRA 375 (1999).

[16] *Abalos vs. Court of Appeals*, 321 SCRA 446 (1999).

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judged on its own merits, and if ** (it) is otherwise clear and convincing and not destroyed by other evidence on record, it may be relied upon."[17] In this case, both the trial court and the Court of Appeals found Divinaflor's testimony to be convincing, a finding with which, in the premises, this Court will not and cannot take issue.

In the same vein, the issue of incompetency of Divinaflor to testify on the possession of his predecessor-in-interest since 1939 is likewise unavailing and must be rejected. A timely objection was never made by petitioner on the ground of incompetency of Divinaflor to testify on this matter at any stage of the proceedings. It is an elementary rule in evidence that:

"when a witness is produced, it is a right and privilege accorded to the adverse party to object to his examination on the ground of incompetency to testify. If a party knows before trial that a witness is incompetent, objection must be made before trial that a witness is incompetent, objection must be made before he has given any testimony; if the incompetency appears on the trial, it must be interposed as soon as it becomes apparent."[18]

Simply put, any objection to the admissibility of evidence should be made at the time such evidence is offered or as soon thereafter as the objection to its admissibility becomes apparent, otherwise the objection will be considered waived and such evidence will form part of the records of the case as competent and admissible evidence.[19] The failure of petitioner to interpose a timely objection to the presentation of Divinaflor's testimony results in the waiver of any objection to the admissibility thereof and he is therefore barred from raising said issue on appeal.

Be that as it may, a person is competent to be a witness if (a) he is capable of perceiving at the time of the occurrence of the

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[17] *Republic vs. Court of Appeals,* 292 SCRA 728 (1998).

[18] Ricardo J. Francisco, Basic Evidence, Manila: Rex Book Store, 1991.

[19] *Chua vs. Court of Appeals,* 301 SCRA 356 (1999).

[20] Oscar M. Herrera, Remedial Law, Volume V, Manila: Rex Book Store, 1999.

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fact and (b) he can make his perception known.[20] True, in 1939, Divinaflor was not born yet, but in 1945, he was four years old, residing in Maramba, Oas, Albay, where the subject lot is located. As his testimony goes, he and Marcial Listana were barrio mates, and that he usually passes by the subject land. The fact that Divinaflor was only a child at the required inception of possession does not render him incompetent to testify on the matter. It is well-established that any child regardless of age, can be a competent witness if he can perceive, and perceiving can make known his perception to others and that he is capable of relating truthfully facts for which he is examined.[21] The requirements of a child's competence as a witness are: (a) capacity of observation; (b) capacity of recollection; and (c) capacity of communication.[22] There is no showing that as a child, claimant did not possess the foregoing qualifications. It is not necessary that a witness' knowledge of the fact to which he testifies was obtained in adulthood. He may have first acquired knowledge of the fact during childhood, that is at the age of four, which knowledge was reinforced through the years, up until he testified in court in 1990. There is reason to reject petitioner's claim that Divinaflor is incompetent to testify regarding Listana's possession since it appears undisputed that Divinaflor grew up in Maramba, Oas, Albay, and had occasion to see Listana possessing the land.

Finally, we agree with the Court of Appeals that the belated declaration of the property for tax purposes does not necessarily lead to the conclusion that the predecessors were not in possession of the land as required by law since 1945. Petitioner capitalizes on the fact that the earliest tax declaration presented took effect only in 1980 while the certificate of tax payment is dated 1990. While this Court has held in a long line of cases[23] that tax declarations or tax receipts are good *indicia* of possession in

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[21] *People vs. Nang,* 289 SCRA 16 (1998).

[22] *Ibid.*

[23] *Director of Lands vs. Court of Appeals, supra; Republic vs. Court of Appeals,* 258 SCRA 712 (1996); *Heirs of Severo Legaspi, Sr. vs. Vda. de Dayof,* 188 SCRA 508 (1990).

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the concept of owner, it does not necessarily follow that belated declaration of the same for tax purposes negates the fact of possession, especially in the instant case where there are no other persons claiming any interest in Lot 10739.

**WHEREFORE**, the petition is hereby *DENIED* for lack of merit. The Court resolves to *AFFIRM* the challenged decision of the Court of Appeals dated February 8, 1994 which sustained the *JUDGMENT* of the Regional Trial Court rendered on July 27, 1990 granting the registration of title to herein private respondent.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 128750. January 18, 2001]

**CARQUELO OMANDAM and ROSITO ITOM,**[1] *petitioners, vs.* **COURT OF APPEALS, BLAS TRABASAS and AMPARO BONILLA,** *respondents.*

**SYNOPSIS**

On January 29, 1974, the Bureau of Lands in Pagadian City issued in favor of Camilo Lasola a homestead patent for Lot No. 8736 located in Sagrada, Tambulig, Zamboanga del Sur. On April 28, 1978, an Original Certificate of Title was issued in his name. On April 28, 1983, Blas Trabasas bought the said land

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[1] "Itom" in the petition for review, but "Etom" in the signature portion of the Certificate of Non-Forum Shopping, *Rollo*, p. 20.