

**ANDREA TABUSO AND RENATO BISMORTE, PETITIONERS, VS.
COURT OF APPEALS AND THE HEIRS OF ESTEBAN ABAD
REPRESENTED BY NEMESIO ABAD AND ANA ABAD PAGHUBASAN,
RESPONDENTS.**

G.R. No. 108558. June 21, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

It is settled that great weight, and even finality, is accorded to the factual conclusions of the Court of Appeals which affirm those of the trial courts. Only when it is clearly shown that such findings are whimsical, capricious, and arbitrary can they be overturned.

Statement of the Case

Before us is an appeal under Rule 45 of the Rules of Court, assailing the July 29, 1992 Decision[1] of the Court of Appeals[2] (CA) in CA-GR CV No. 26047 and its January 14, 1993 Resolution[3] denying reconsideration. The CA affirmed in toto the Decision of the Regional Trial Court, which had found abundant proof of appellees' ownership of the land, as opposed to the scanty evidence offered by appellants. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, [there being] no reversible error in the decision appealed from[,] the same is hereby affirmed in toto. Costs against appellants."[4]

The Facts

The undisputed facts of the case are summarized by the Court of Appeals as follows:

"This case involves declaration of ownership filed before the Regional Trial Court of Naval, Leyte, [in] Biliran, Leyte, of an unregistered parcel of land at Antipolo, Naval, Leyte with an area of 3,267 square meters.

"The plaintiffs' evidence consists of the following:

"a) A tax declaration No. 3705 (Exh. A) in the name of Ignacio Montes for the year 1912. However, the land taxes thereon for the years 1944 to 1947 were paid only in 1981 (Exh. F and series).

"b) Plaintiff Andrea Tabuso claims to be the owner as successor in interest (granddaughter) of one Andrea Elaba, daughter of Maria Montes and Borja Elaba, Maria Montes appears to be a sister of Ignacio Montes, in whose name the tax declaration for the property in question was issued for the year 1912 (Exh. A).

"c) The property in question has been in the possession of the defendants (heirs of Esteban Abad), although the house standing thereon appears to have been constructed by Marcelo Tabuso, father of plaintiff Andrea Tabuso.

"On the other hand, evidence for the defendants tends to establish the following:

"a) The land in question originally owned by Maria Montes was donated to Isabel Elaba through an ancient document executed on September 24, 1923 (Exh. F). Isabel in turn sold the land to Esteban Abad on May 5, 1948 (Exh. 4).

"b) The original tax declaration in the name of Ignacio Montes (Exh. A) was superseded by Tax Declaration Nos. 6422 and 1450 both in the name of Isabel Elaba (Exh. 6-D; 6-E)[;] Declaration No. 1450 for the year 1948 was superseded by Tax Declaration No. 6959 for 1960 (Exh. 6-C) in the name of Esteban Abad; and the latter was superseded in 1969 by Tax Declaration No. 1661 (Exh. 6-B) in the name of Esteban Abad. In 1974 a new tax declaration No. 19 (Exh. 6-A) was issued in the name of Esteban Abad with Nemesio Abad and his co-heirs as administrators. The last tax declaration No. 22 (Exh. 6) for 1982 was in the name of Esteban Abad. The land taxes due thereon for the years 1947 to 1982 were paid by Isabel Elaba[, Esteban Abad and Nemesio Abad (Exhs. 7 to 7-W).

"c) The land in question is tenanted by one Valentin Poblete in accordance with a lease contract executed by defendant Nemesio [Abad], one of the heirs and co-owners of the land.

"On the basis of the foregoing evidence, the court dismissed the complaint and declared the defendant the lawful owners of the land in question."[5]

The trial court[6] concluded that there was abundant proof of private respondents' ownership of the lot in question as against the scanty evidence offered by petitioners. And even if the latter had built a house thereon, such action was only tolerated by private respondents, who had originally allowed one Marcelo Tabuso (father of Petitioner Andrea Tabuso), to construct a house on the same lot. Besides, Petitioner Tabuso is not a compulsory heir of Ignacio Montes, from whom she claims to have inherited the lot, subject of this litigation. In addition, the tax declaration in his name has long been revised.

The trial court likewise gave credit to the testimony of Atty. Jose Gonzales, private respondents' counsel who had been presented by petitioners as their own witness. He testified that the land in question, which was adjacent to the land he himself possessed, had been in the possession of Esteban Abad's heirs, herein private respondents. The trial court also took note of the various tax declarations covering the property, indicating that it was owned by private respondents.

Ruling of the Court of Appeals

The Court of Appeals upheld the findings of the trial court. It ruled as follows:

"The only issue presented to [u]s for resolution is the question of ownership. After a careful review of the records, [w]e agree with the trial court that the preponderance of evidence supports the claim of ownership of defendants-appellees.

"As regards the first assigned error, [the] trial court cannot be faulted for giving weight to the testimony of Atty. Jose Gonzales. He testified that the land in question had been in the possession of appellees; that he personally [knew] this as he own[ed] the land adjacent to the land in question at the northern point; that he inherited said land from his late father; and that he frequently visit[ed] his land and passe[d] by the land in question. Thus, he testified of his own personal knowledge regarding the fact of possession. Moreover, Atty. Gonzales, although a counsel for appellees, was presented by appellants as their own witness; hence, they are bound by his testimony.

"As to the validity of the document of donation executed by appellants' predecessor in interest, Maria Montes in 1923, or more than sixty (60) years ago, it is too late in the day to raise the question of the validity of said document. Appellants are barred by laches to raise the same. Moreover, the issue is being raised for the first time on appeal, which is not allowed.

"It also appears that since 1923 to the present, or for more than 60 years, appellees have been able to establish by the tax declarations in their name and that of their predecessors in interest that they have been in open, continuous, uninterrupted and adverse possession of the land in question.

"x x x x x x x x

"Finally, the area of the land appears to be immaterial. Whether it is only 3,267 square meters as contained in the tax declaration, or 11,927 square meters, as found by the court-appointed commissioner, the important thing to consider is that appellants have not substantiated their claim by a preponderance of evidence adverse to the claim of ownership and possession of appellees."[7]

Issues

In their Memorandum,[8] petitioners raise the following issues:

"I

The findings and conclusion of the Honorable Court of Appeals that private respondents are in possession and owners of the land in dispute are contradicted by the evidence on record.

"II

The Honorable Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction when it upheld the validity of the Deed of Donation dated September 23, 1923 which is [a] spurious document as it was executed by Maria Montes who was already dead as early as 1919.

"III

The Honorable Court of Appeals gravely erred in holding private respondents as owners of the land notwithstanding the undisputed fact that they (private respondents) admitted the facts set forth by appellants[,] now petitioners in their appellants brief[,] as the former (private respondents[]) did not file their appellees brief[.]

"IV

The Order of the respondent Court of Appeals to deliver the entire 11,927 sq. meters to private respondent is illegal and unsupported by evidence.

"V

The Court of Appeals gravely erred in concluding that private respondents are the owners of the land merely on the basis of their tax declarations without evidence of actual physical possession."[9]

In sum, the main issue that needs to be resolved in the case at bar is the ownership of the land in question. The other issues presented by petitioners are merely ancillary and will be discussed in conjunction with this main issue.

The Court's Ruling

The Petition is devoid of merit.[10]

Main Issue:

Ownership of the Property

After a careful examination of the issues involved, the evidence adduced, and the arguments or issues raised by both parties, this Court rules that the totality of the evidence presented leans heavily in favor of herein private respondents.

"It is settled that great weight, and even finality, is given to the factual conclusions of the Court of Appeals which affirm those of the trial courts. Only where it is shown that such findings are whimsical, capricious, and arbitrary can they be overturned." [11]

We agree with the findings of the Court of Appeals that for a period of more than 60 years, private respondents have been able to establish that they are the owners of the lot; and that for said period, they have been in open, continuous and uninterrupted possession of the same.

Both the trial and the appellate courts were likewise correct in giving weight to the testimony of Atty. Jose Gonzales. He testified that being, the owner of the adjacent land, he had personal knowledge of the simple fact that the land in question was owned by private respondents, who were in actual, open and continuous possession thereof. Significantly, while he was private respondents' counsel, he was presented by petitioners themselves. Having done so, they are bound by his testimony, even if it is hostile.

The only substantial argument of petitioners supporting their claim of ownership is their construction of a small house (barong-barong) on the property, as acknowledged in private respondents' letter, which reads:

"Notice to Vacate

Naval, Leyte

September 24, 1981

To: Mr. & Mrs. Renato Bismorte

Barangay Calumpang

Naval, Leyte

Greetings:

You are advised to vacate the area/lot where your 'Barong-Barong House' [was] temporarily constructed for we, the lawful owners, shall have to use it. You are given three (3) months grace period upon receipt thereof within which to transfer or completely vacate the area/lot.

[Should there be failure to comply [with] this notice or advise [,] an ejectment proceeding shall be instituted or filed against you before the proper court. Hence, compliance is hereby desired.

(Signed) Mr. NEMESIO E. ABAD

Co-Owner

(Signed) ANA A. PAGHUBASAN

Co-Owner

(Signed) NESTORA DELA CUALA" [12]

Obviously, the claim of private respondents that they are the owners of the land is supported by the above letter, in which they were asking petitioners to vacate the property. Moreover, considering its size, which is 11,927 square meters as found by the court-appointed commissioner, the fact that petitioners' house is only a barong-barong or make-shift shanty lends support to private respondents' claim that the former's presence on the property was merely tolerated.

It must be stressed "that possession and ownership are distinct legal concepts. Ownership exists when a thing pertaining to one person is completely subjected to his will in a manner not prohibited by law and consistent with the rights of others. Ownership confers certain rights to the owner, one of which is the right to dispose of the thing

by way of sale. xxx. On the other hand, possession is defined as the holding of a thing or the enjoyment of a right. Literally, to possess means to actually and physically occupy a thing with or without right. Possession may be had in one of two ways: possession in the concept of an owner and possession of a holder. Possessors in the concept of owners may be the owners themselves or those who claim to be so. On the other hand, those who possess as mere holders acknowledge in another a superior right which he believes to be ownership, whether his belief be right or wrong."[13]

In this case, the evidence shows that the occupation of the property by petitioners is not in the concept of owners, because their stay is merely tolerated. This finding is bolstered by the fact that Petitioner Andrea Tabuso is the daughter of Marcelo Tabuso, who was merely allowed by the previous owner, Esteban Abad, to construct a small house on the lot. As held in *Caniza v. Court of Appeals*,^[14] "an owner's act of allowing another to occupy his house, rent-free[,] does not create a permanent and indefeasible right of possession in the latter's favor."^[15]

Lastly, the claim of petitioners that private respondents are not in actual possession of the land is unsubstantiated. Besides, it is not necessary that the latter actually stay on the property in order to prove ownership of the same. As found by both the trial and the appellate courts, since the acquisition of the subject property by private respondents, they had religiously paid the taxes due thereon. Further, one of the co-owners executed a lease contract over it in favor of a tenant. These acts are clearly consistent with ownership.

Deed of Donation Not Proven to Be Invalid

Petitioners point out that the Deed of Donation executed by Maria Montes to Isabel Elaba, who in turn sold the lot to private respondents, is spurious since the Deed was executed on September 23, 1923; whereas the death certificate issued by the Holy Rosary Cathedral Parish of Naval, Leyte, shows that Maria Montes was buried on February 21, 1919.

However, the Court of Appeals was correct in stating that petitioners were barred by laches from questioning the validity of the Deed. "Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting [the] presumption that the party entitled to it either has abandoned it or declined to assert it."^[16] It is too late for private respondents to raise this issue now, considering that the Deed of Donation was executed more than 60 years ago. Moreover, they are precluded from raising this argument, because it is being raised for the first time on appeal.^[17]

In addition, private respondents have not proven that the Maria Montes mentioned in the Death Certificate is the same Maria Montes who executed the Deed of Donation. The two have been shown to have different sets of parents, thus raising serious doubts on the identity of the person mentioned in the Death Certificate. Lastly, the Death Certificate was not marked in evidence, nor was it subjected to cross-examination. It is thus inadmissible in evidence.

Size of Lot Immaterial To Private Respondents' Claim of Ownership

Lastly, petitioners argue that private respondents own only 3,267 square meters of the questioned lot. This is the area that appears on their Tax Declarations. On the other hand, the entire lot that was adjudicated measures 11,927 square meters. Petitioners' contention deserves scant consideration, because they have not substantiated, by any means whatsoever, their claim to any part of the disputed land. Hence, they are not entitled to ownership thereof. Besides, what defines a piece of land is not the numerical data indicated as its area, but the boundaries or "metes

and bounds" specified in its description as enclosing the land and indicating its limits.[18]

WHEREFORE, the petition is hereby DISMISSED and the assailed Decision and Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 71-75.

[2] Twelfth Division. Written by J. Nicolas P. Lapena Jr., ponente; concurred in by JJ Manuel C. Herrera (Division chairman) and Maria Alicia M. Austria (member).

[3] Rollo, p. 87.

[4] Assailed Decision, p. 5; rollo, p. 75.

[5] Assailed Decision, pp. 1-3; rollo, pp. 71-73.

[6] Regional Trial Court, Branch 16, Naval, Subprovince of Biliran, Leyte.

[7] Assailed Decision, pp. 3-5; rollo, pp. 73-75.

[8] Rollo, pp. 129-151. Petitioners' Memorandum was signed by Atty. Arceli A. Rubin of the Public Attorney's Office.

[9] Memorandum for Petitioners, pp. 4-5; rollo, pp. 132-133.

[10] To eradicate its backlog of old cases, the Court on February 27, 2001 resolved to redistribute long-pending cases to justices who had no backlog, and who were thus tasked to prioritize them. Consequently, this case was raffled and assigned to the undersigned ponente for study and report.

[11] *Compania Maritima, Inc. v. Court of Appeals*, 318 SCRA 169, November 16, 1999, per Mendoza, J. See also *American Home Assurance Company v. Chua*, 309 SCRA 250, June 28, 1999; and *Rosales v. Court of Appeals*, 298 SCRA 495, November 16, 1998.

[12] Memorandum for Petitioners, p. 8; rollo, p. 136.

[13] *Garcia v. Court of Appeals*, 312 SCRA 180, August 10, 1999, per Puno, J.

[14] 268 SCRA 640, February 24, 1997.

[15] *Caniza v. Court of Appeals*, 268 SCRA 640, February 24, 1997, per Narvasa, CJ.

[16] *Traders Royal Bank v. Court of appeals*, 315 SCRA 190, September 24, 1999, per Kapunan, J.

[17] *City of Cebu v. Heirs of Rubi*, 306 SCRA 408, April 29, 1999; *Keng Hua Paper Products v. Court of Appeals*, 286 SCRA 257, February 12, 1998.

[18] *People v. Court of Appeals*, 301 SCRA 475, January 21, 1999, per Panganiban, J.

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