

HEIRS OF TEOFILO GABATAN, NAMELY: LOLITA GABATAN, POMPEYO GABATAN, PEREGRINO GABATAN, REYNALDO GABATAN, NILA GABATAN AND JESUS JABINIS, RIORITA GABATAN TUMALA AND FREIRA GABATAN...*G.R. No. 150206. March 13, 2009*

Ponente: LEONARDO-DE CASTRO, J.

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Assailed and sought to be set aside in the instant petition for review on certiorari are the Decision[1] dated April 28, 2000, and Resolution[2] dated September 12, 2001 of the Court of Appeals (CA), in CA G.R. CV No. 52273. The challenged Decision affirmed the decision[3] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 19, dated October 20, 1995 in Civil Case No. 89-092, an action for Recovery of Property and Ownership and Possession, thereat commenced by respondent Lourdes Evero Pacana against petitioners, heirs of Teofilo Gabatan, Jesus Jabinis and Catalino Acantilado.

Subject of the present controversy is a 1.1062 hectare parcel of land, identified as Lot 3095 C-5 and situated at Calinugan, Balulang, Cagayan de Oro City. This lot was declared for taxation in the name of Juan Gabatan. In the complaint before the RTC, respondent alleged that she is the sole owner of Lot 3095 C-5, having inherited the same from her deceased mother, Hermogena Gabatan Evero (Hermogena). Respondent further claimed that her mother, Hermogena, is the only child of Juan Gabatan and his wife, Laureana Clarito. Respondent alleged that upon the death of Juan Gabatan, Lot 3095 C-5 was entrusted to his brother, Teofilo Gabatan (Teofilo), and Teofilo's wife, Rita Gabatan, for administration. It was also claimed that prior to her death Hermogena demanded for the return of the land but to no avail. After Hermogena's death, respondent also did the same but petitioners refused to heed the numerous demands to surrender the subject property. According to respondent, when Teofilo and his wife died, petitioners Jesus Jabinis and Catalino Acantilado took possession of the disputed land despite respondent's demands for them to vacate the same.

In their answer, petitioners denied that respondent's mother Hermogena was the daughter of Juan Gabatan with Laureana Clarito and that Hermogena or respondent is the rightful heir of Juan Gabatan. Petitioners maintained that Juan Gabatan died single in 1934 and without any issue and that Juan was survived by one brother and two sisters, namely: Teofilo (petitioners' predecessor-in-interest), Macaria and Justa. These siblings and/or their heirs, inherited the subject land from Juan Gabatan and have been in actual, physical, open, public, adverse, continuous and uninterrupted possession thereof in the concept of owners for more than fifty (50) years and enjoyed the fruits of the improvements thereon, to the exclusion of the whole world including respondent. Petitioners clarified that Jesus Jabinis and Catalino Acantilado have no interest in the subject land; the former is merely the husband of Teofilo's daughter while the latter is just a caretaker. Petitioners added that a similar case was previously filed by respondent against Teofilo's wife, Rita Vda. de Gabatan, on February 21, 1978, docketed as Civil Case No. 5840 but the case was dismissed on May 3, 1983 for lack of interest. Finally, petitioners contended that the complaint lacks or states no cause of action or, if there was any, the same has long prescribed and/or has been barred by

laches.

On June 20, 1989, the complaint was amended wherein the heirs of Teofilo were individually named, to wit: Lolita Gabatan, Pompeyo Gabatan, Peregrino Gabatan, Reynaldo Gabatan, Nila Gabatan and Jesus Jabinis, Riorita Gabatan Tumul and Freira Gabatan.

On July 30, 1990, petitioners filed an amended answer, additionally alleging that the disputed land was already covered by OCT No. P-3316 in the name of the heirs of Juan Gabatan represented by petitioner Riorita Gabatan (Teofilo's daughter).

On October 20, 1995, the RTC rendered a decision in favor of respondent, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring the plaintiff the owner of Lot No. 3095 C-5 situated at Calinugan, Balulang, Cagayan de Oro City; and ordering the defendants represented by Riorita Gabatan Tumala to RECONVEY Original Certificate of Title No. P-3316 in favor of plaintiff Lourdes Evero Pacana, free of any encumbrance; ordering the defendants to pay P10,000.00 by way of moral damages; P10,000.00 as Attorney's fees; and P2,000.00 for litigation expenses.

SO ORDERED.[4]

Aggrieved, petitioners appealed to the CA whereat their recourse was docketed as CA-G.R. CV No. 52273.

On April 28, 2000, the CA rendered the herein challenged Decision affirming that of the RTC. Dispositively, the Decision reads:

WHEREFORE, premises considered, the questioned decision of the lower court dated October 20, 1995 is hereby AFFIRMED. With costs against appellants.

SO ORDERED.

Discounting petitioners' argument that respondent is not related to Juan Gabatan, the CA declared that respondent's claim of filiation with Juan Gabatan was sufficiently established during trial. Thus, the CA echoed a long line of jurisprudence that findings of fact of the trial court are entitled to great weight and are not disturbed except for cogent reasons, such as when the findings of fact are not supported by evidence.

The CA likewise gave weight to the Deed of Absolute Sale[5] executed by Macaria Gabatan de Abrogar, Teofilo, Hermogena and heirs of Justa Gabatan, wherein Hermogena was identified as an heir of Juan Gabatan:

x x x HERMOGENA GABATAN, of legal age, married, Filipino citizen and presently residing at Kolambugan, Lanao del Norte, Philippines, as Heir of the deceased, JUAN GABATAN; x x x.

To the CA, the Deed of Absolute Sale on July 30, 1966 containing such declaration which was signed by Teofilo and the latter's nearest relatives by consanguinity, is a tangible proof that they acknowledged Hermogena's status as the daughter of Juan Gabatan. Applying Section 38, Rule 130[6] of the Rules of Court on the declaration against interest, the CA ruled that petitioners could not deny that even their very own father, Teofilo formally recognized Hermogena's right to heirship from Juan Gabatan which ultimately passed on to respondent.

As to the issue of prescription, the CA ruled that petitioners' possession of the disputed property could not ripen into acquisitive prescription because their predecessor-in-interest, Teofilo, never held the property in the concept of an owner.

Aggrieved, petitioners are now with this Court via the present recourse principally contending that the CA committed the following reversible errors:

FIRST ERROR: The lower court erred in not declaring that Juan Gabatan died single and without issue;

SECOND ERROR: The lower court erred in declaring the plaintiff-appellee (respondent) as the sole and surviving heir of Juan Gabatan, the only child of a certain Hermogena Clareto "GABATAN";

THIRD ERROR: The lower court erred in declaring that a certain Hermogena Clareto "GABATAN" is the child and sole heir of Juan Gabatan;

FOURTH ERROR: The lower court erred in failing to appreciate by preponderance of evidence in favor of the defendants-appellants (petitioners) claim that they and the heirs of Justa and Macaria both surnamed Gabatan are the sole and surviving heirs of Juan Gabatan and, therefore, entitled to inherit the land subject matter hereof;

FIFTH ERROR: The lower court erred in not declaring that the cause of action of plaintiff-appellee (respondent) if any, has been barred by laches and/or prescription.[7]

Before proceeding to the merits of the case, we must pass upon certain preliminary matters.

In general, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Questions of fact cannot be the subject of this particular mode of appeal, for this Court is not a trier of facts.[8] It is not our function to examine and evaluate the probative value of the evidence presented before the concerned tribunal upon which its impugned decision or resolution is based.[9]

However, there are established exceptions to the rule on conclusiveness of the findings of fact by the lower courts, such as (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[10]

Moreover, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Thus, the Court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. [11]

In the light of the foregoing established doctrines, we now proceed to resolve the merits of the case.

The respondent's main cause of action in the court a quo is the recovery of ownership and possession of property. It is undisputed that the subject property, Lot 3095 C-5, was owned by the deceased Juan Gabatan, during his

lifetime.[12] Before us are two contending parties, both insisting to be the legal heir(s) of the decedent.

Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.[13]

In the early case of *Litam, et al. v. Rivera*, [14] this Court ruled that the declaration of heirship must be made in a special proceeding, and not in an independent civil action. This doctrine was reiterated in *Solivio v. Court of Appeals* [15] where the Court held:

xxx where despite the pendency of the special proceedings for the settlement of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action in which they claimed that they were the children by a previous marriage of the deceased to a Chinese woman, hence, entitled to inherit his one-half share of the conjugal properties acquired during his marriage to Marcosa Rivera, the trial court in the civil case declared that the plaintiffs-appellants were not children of the deceased, that the properties in question were paraphernal properties of his wife, Marcosa Rivera, and that the latter was his only heir. On appeal to this Court, we ruled that `such declarations (that Marcosa Rivera was the only heir of the decedent) is improper, in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceedings No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.

In the more recent case of *Milagros Joaquin v. Lourdes Reyes*, [16] the Court reiterated its ruling that matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights. Citing the case of *Agapay v. Palang*, [17] this Court held that the status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property.

However, we are not unmindful of our decision in *Portugal v. Portugal-Beltran*, [18] where the Court relaxed its rule and allowed the trial court in a proceeding for annulment of title to determine the status of the party therein as heirs, to wit:

It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case - subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.

In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners (*Vide Pereira v. Court of Appeals*, 174 SCRA 154 [1989]; *Intestate Estate of Mercado v. Magtibay*, 96 Phil. 383 [1955]), the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial, x x x. (emphasis supplied)

Similarly, in the present case, there appears to be only one parcel of land being claimed by the contending parties as their inheritance from Juan Gabatan. It would be more practical to dispense with a separate special proceeding for the determination of the status of respondent as the sole heir of Juan Gabatan, specially in light of the fact that the parties to Civil Case No. 89-092, had voluntarily submitted the issue to the RTC and already presented their evidence regarding the issue of heirship in these proceeding. Also the RTC assumed jurisdiction over the same and consequently rendered judgment thereon.

We GRANT the petition.

After a meticulous review of the records of this case, we find insufficient and questionable the basis of the RTC in conferring upon respondent the status of sole heir of Juan Gabatan.

Respondent, in asserting to be entitled to possession and ownership of the property, pinned her claim entirely on her alleged status as sole heir of Juan Gabatan. It was incumbent upon her to present preponderant evidence in support of her complaint.

Under the Civil Code, the filiation of legitimate children is established by any of the following:

ART. 265. The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment.

ART. 266. In the absence of the titles indicated in the preceding article, the filiation shall be proved by the continuous possession of status of a legitimate child.

ART. 267. In the absence of a record of birth, authentic document, final judgment or possession of status, legitimate filiation may be proved by any other means allowed by the Rules of Court and special laws.

Here, two conflicting birth certificates[19] of respondent were presented at the RTC. Respondent, during her direct testimony, presented and identified a purported certified true copy of her typewritten birth certificate which indicated that her mother's maiden name was "Hermogena Clarito Gabatan." Petitioners, on the other hand, presented a certified true copy of respondent's handwritten birth certificate which differed from the copy presented by respondent. Among the differences was respondent's mother's full maiden name which was indicated as "Hermogena Calarito" in the handwritten birth certificate.

In resolving this particular issue, the trial court ruled in this wise:

The parties are trying to outdo with (sic) each other by presenting two conflicting Certificate (sic) of Live Birth of plaintiff herein, Lourdes Evero Pacana, which are Exhibit "A" for the plaintiff and Exhibit "1" for the defendants. Which of this (sic) is genuine, and which is falsified. These (sic) issue is crucial and requires serious scrutiny. The Court is of the observation that Exhibit "A" for the plaintiff which is a certified true copy is in due form and bears the "as is and where is" rule. It has the impression of the original certificate. The forms (sic) is an old one used in the 1950's. Her mother's maiden name appearing thereof is Hermogina (sic) Clarito Gabatan. While Exhibit "1", the entries found thereof (sic) is handwritten which is very unusual and of dubious source. The form used is of latest vintage. The entry on the space for mother's maiden name is Hermogena Calarito. There seems to be an apparent attempt to thwart plaintiff's mother filiation with the omission of the surname Gabatan. Considering these circumstances alone the Court is inclined to believe that Exhibit "A" for the plaintiff is far more genuine and authentic certificate of live birth.[20]

Having carefully examined the questioned birth certificates, we simply cannot agree with the above-quoted findings of the trial court. To begin with, Exhibit A, as the trial court noted, was an original typewritten document, not a mere photocopy or facsimile. It uses a form of 1950's vintage[21] but this Court is unable to concur in the trial court's finding that Exhibit 1[22] was of a later vintage than Exhibit A which was one of the trial court's bases

for doubting the authenticity of Exhibit 1. On the contrary, the printed notation on the upper left hand corner of Exhibit 1 states "Municipal Form No. 102 - (Revised, January 1945)" which makes it an older form than Exhibit A. Thus, the trial court's finding regarding which form was of more recent vintage was manifestly contradicted by the evidence on record. No actual signature appears on Exhibit A except that of a certain Maximo P. Noriga, Deputy Local Civil Registrar of the Office of the Local Civil Registrar, Cagayan de Oro City, who purportedly certified on July 6, 1977 that Exhibit A was a true copy of respondent's birth certificate. The names of the attendant at birth (Petra Sambaan) and the local civil registrar (J.L. Rivera) in 1950 were typewritten with the notation "(Sgd.)" also merely typewritten beside their names. The words "A certified true copy: July 6, 1977" above the signature of Maximo P. Noriga on Exhibit A appear to be inscribed by the same typewriter as the very entries in Exhibit A. It would seem that Exhibit A and the information stated therein were prepared and entered only in 1977. Significantly, Maximo P. Noriga was never presented as a witness to identify Exhibit A. Said document and the signature of Maximo P. Noriga therein were identified by respondent herself whose self-serving testimony cannot be deemed sufficient authentication of her birth certificate.

We cannot subscribe to the trial court's view that since the entries in Exhibit 1 were handwritten, Exhibit 1 was the one of dubious credibility. Verily, the certified true copies of the handwritten birth certificate of respondent (petitioners' Exhibits 1 and 8) were duly authenticated by two competent witnesses; namely, Rosita Vidal (Ms. Vidal), Assistant Registration Officer of the Office of the City Civil Registrar, Cagayan de Oro City and Maribeth E. Cacho (Ms. Cacho), Archivist of the National Statistics Office (NSO), Sta. Mesa, Manila. Both witnesses testified that: (a) as part of their official duties they have custody of birth records in their respective offices,[23] and (b) the certified true copy of respondent's handwritten birth certificate is a faithful reproduction of the original birth certificate registered in their respective offices.[24] Ms. Vidal, during her testimony, even brought the original of the handwritten birth certificate before the trial court and respondent's counsel confirmed that the certified true copy (which was eventually marked as Exhibit 1) was a faithful reproduction of the original.[25] Ms. Vidal likewise categorically testified that no other copy of respondent's birth certificate exists in their records except the handwritten birth certificate.[26] Ms. Cacho, in turn, testified that the original of respondent's handwritten birth certificate found in the records of the NSO Manila (from which Exhibit 8 was photocopied) was the one officially transmitted to their office by the Local Civil Registry Office of Cagayan de Oro.[27] Both Ms. Vidal and Ms. Cacho testified and brought their respective offices' copies of respondent's birth certificate in compliance with subpoenas issued by the trial court and there is no showing that they were motivated by ill will or bias in giving their testimonies. Thus, between respondent's Exhibit A and petitioners' Exhibits 1 and 8, the latter documents deserve to be given greater probative weight.

Even assuming purely for the sake of argument that the birth certificate presented by respondent (Exhibit A) is a reliable document, the same on its face is insufficient to prove respondent's filiation to her alleged grandfather, Juan Gabatan. All that Exhibit A, if it had been credible and authentic, would have proven was that respondent's mother was a certain "Hermogena Clarito Gabatan." It does not prove that same "Hermogena Clarito Gabatan" is the daughter of Juan Gabatan. Even the CA held that the conflicting certificates of live birth of respondent submitted by the parties only proved the filiation of respondent to Hermogena.[28]

It was absolutely crucial to respondent's cause of action that she convincingly proves the filiation of her mother to Juan Gabatan. To reiterate, to prove the relationship of respondent's mother to Juan Gabatan, our laws dictate that the best evidence of such familial tie was the record of birth appearing in the Civil Register, or an authentic document or a final judgment. In the absence of these, respondent should have presented proof that her mother enjoyed the continuous possession of the status of a legitimate child. Only in the absence of these two classes of evidence is the respondent allowed to present other proof admissible under the Rules of Court of her mother's relationship to Juan Gabatan.

However, respondent's mother's (Hermogena's) birth certificate, which would have been the best evidence of Hermogena's relationship to Juan Gabatan, was never offered as evidence at the RTC. Neither did respondent present any authentic document or final judgment categorically evidencing Hermogena's relationship to Juan Gabatan.

Respondent relied on the testimony of her witnesses, Frisco Lawan, Felicisima Nagac Pacana and Cecilia Nagac Villareal who testified that they personally knew Hermogena (respondent's mother) and/or Juan Gabatan, that they knew Juan Gabatan was married to Laureana Clarito and that Hermogena was the child of Juan and Laureana. However, none of these witnesses had personal knowledge of the fact of marriage of Juan to Laureana or the fact of birth of Hermogena to Juan and Laureana. They were not yet born or were very young when Juan supposedly married Laureana or when Hermogena was born and they all admitted that none of them were present at Juan and Laureana's wedding or Hermogena's birth. These witnesses based their testimony on what they had been told by, or heard from, others as young children. Their testimonies were, in a word, hearsay.

Other circumstances prevent us from giving full faith to respondent's witnesses' testimonies. The records would show that they cannot be said to be credible and impartial witnesses. Frisco Lawan testified that he was the son of Laureana by a man other than Juan Gabatan and was admittedly not at all related to Juan Gabatan.[29] His testimony regarding the relationships within the Gabatan family is hardly reliable. As for Felicisima Nagac Pacana and Cecilia Nagac Villareal who are children of Justa Gabatan Nagac,[30] this Court is wary of according probative weight to their testimonies since respondent admitted during her cross-examination that her (respondent's) husband is the son of Felicisima Nagac Pacana.[31] In other words, although these witnesses are indeed blood relatives of petitioners, they are also the mother and the aunt of respondent's husband. They cannot be said to be entirely disinterested in the outcome of the case.

Aside from the testimonies of respondent's witnesses, both the RTC and the CA relied heavily on a photocopy of a Deed of Absolute Sale[32] (Exhibit H) presented by respondent and which appeared to be signed by the siblings and the heirs of the siblings of Juan Gabatan. In this document involving the sale of a lot different from Lot 3095 C-5, "Hermogena Gabatan as heir of the deceased Juan Gabatan" was indicated as one of the vendors. The RTC deemed the statement therein as an affirmation or recognition by Teofilo Gabatan, petitioners' predecessor in interest, that Hermogena Gabatan was the heir of Juan Gabatan.[33] The CA considered the same statement as a declaration against interest on the part of Teofilo Gabatan.[34]

However, the admission of this Deed of Absolute Sale, including its contents and the signatures therein, as competent evidence was vigorously and repeatedly objected to by petitioners' counsel for being a mere photocopy and not being properly authenticated.[35] After a close scrutiny of the said photocopy of the Deed of Absolute Sale, this Court cannot uphold the admissibility of the same.

Under the best evidence rule, when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[36] Although the best evidence rule admits of exceptions and there are instances where the presentation of secondary evidence would be allowed, such as when the original is lost or the original is a public record, the basis for the presentation of secondary evidence must still be established. Thus, in *Department of Education Culture and Sports v. Del Rosario*,[37] we held that a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument.

In the case at bar, a perusal of the transcript of the testimony of Felicisima Nagac Pacana (who identified the photocopy of the Deed of Absolute Sale) plainly shows that she gave no testimony regarding the whereabouts of

the original, whether it was lost or whether it was recorded in any public office.

There is an ostensible attempt to pass off Exhibit H as an admissible public document. For this, respondent relied on the stamped notation on the photocopy of the deed that it is a certified true xerox copy and said notation was signed by a certain Honesto P. Velez, Sr., Assessment Officer, who seems to be an officer in the local assessor's office. Regarding the authentication of public documents, the Rules of Court[38] provide that the record of public documents, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy.[39] The attestation of the certifying officer must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be.[40]

To begin with, no proof whatsoever was presented by respondent that an original of Exhibit H was registered or exists in the records of the local assessor's office. Furthermore, the stamped certification of Honesto P. Velez is insufficient authentication of Exhibit H since Velez's certification did not state that Exhibit H was a true copy from the original. Even worse, Velez was not presented as a witness to attest that Exhibit H was a true copy from the original. Indeed, it is highly doubtful that Velez could have made such an attestation since the assessor's office is not the official repository of original notarized deeds of sale and could not have been the legal custodian contemplated in the rules.

It is the notary public who is mandated by law to keep an original of the Deed of Absolute Sale in his notarial register and to forward the same to the proper court. It is the notary public or the proper court that has custody of his notarial register that could have produced the original or a certified true copy thereof. Instead, the Deed of Absolute Sale was identified by Felicisima Nagac Pacana who, despite appearing to be a signatory thereto, is not a disinterested witness and as can be gleaned from her testimony, she had no personal knowledge of the preparation of the alleged certified true copy of the Deed of Absolute Sale. She did not even know who secured a copy of Exhibit H from the assessor's office.[41] To be sure, the roundabout and defective manner of authentication of Exhibit H renders it inadmissible for the purpose it was offered, i.e. as proof that Teofilo Gabatan acknowledged or admitted the status of Hermogena Gabatan as heir of Juan Gabatan.

Even if we are to overlook the lack of proper authentication of Exhibit H and consider the same admissible, it still nonetheless would have only provided proof that a certain Hermogena Gabatan was the heir of Juan Gabatan. Exhibit H does not show the filiation of respondent to either Hermogena Gabatan or Juan Gabatan. As discussed above, the only document that respondent produced to demonstrate her filiation to "Hermogena Gabatan" (respondent's Exhibit A) was successfully put in doubt by contrary evidence presented by petitioners.

As for the issue of laches, we are inclined to likewise rule against respondent. According to respondent's own testimony,[42] Juan Gabatan died sometime in 1933 and thus, the cause of action of the heirs of Juan Gabatan to recover the decedent's property from third parties or to quiet title to their inheritance accrued in 1933. Yet, respondent and/or her mother Hermogena, if they were truly the legal heirs of Juan Gabatan, did not assert their rights as such. It is only in 1978 that respondent filed her first complaint to recover the subject property, docketed as Civil Case No. 5840, against Rita Gabatan, the widow of Teofilo Gabatan.[43] However, that case was dismissed without prejudice for failure to prosecute.[44] Again, respondent waited until 1989 to refile her cause of action, i.e. the present case.[45] She claimed that she waited until the death of Rita Gabatan to refile her case out of respect because Rita was then already old.[46]

We cannot accept respondent's flimsy reason. It is precisely because Rita Gabatan and her contemporaries (who might have personal knowledge of the matters litigated in this case) were advancing in age and might soon expire that respondent should have exerted every effort to preserve valuable evidence and speedily litigate her claim. As

we held in *Republic of the Philippines v. Agunoy*: "Vigilantibus, sed non dormientibus, jura subveniunt, the law aids the vigilant, not those who sleep on their rights...[O]ne may not sleep on a right while expecting to preserve it in its pristine purity." [47]

All in all, this Court finds that respondent dismally failed to substantiate, with convincing, credible and independently verifiable proof, her assertion that she is the sole heir of Juan Gabatan and thus, entitled to the property under litigation. Aggravating the weakness of her evidence were the circumstances that (a) she did not come to court with clean hands for she presented a tampered/altered, if not outright spurious, copy of her certificate of live birth and (b) she unreasonably delayed the prosecution of her own cause of action. If the Court cannot now affirm her claim, respondent has her own self to blame.

WHEREFORE, the petition is GRANTED. The Court of Appeals' Decision in CA-G.R. CV No. 52273, affirming the decision of the Regional Trial Court in Civil Case No. 89-092, is hereby REVERSED and SET ASIDE. The complaint and amended complaint in Civil Case No. 89-092 are DISMISSED for lack of merit.

SO ORDERED.

Ynares-Santiago[**], Carpio[***], Corona, Brion, and Peralta, JJ., concur.
Puno, C.J. on official leave.

[**] Additional member in lieu of Chief Justice Reynato S. Puno as per Special Order No. 584.

[***] Acting Chairperson as per Special Order No. 583.

[****] Additional member as per Special Order No. 570.

[1] Penned by Associate Justice Mario M. Umali (ret.) with Presiding Justice Conrado M. Vasquez, Jr., and Associate Justice Edgardo P. Cruz, concurring; rollo, pp. 16-34.

[2] Rollo, p. 35.

[3] Id. at. 37-47.

[4] Supra, note 3.

[5] Rollo, pp. 309-311.

[6] Rule 130.

Sec. 38. Declaration against interest. - The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.

[7] Rollo, p. 8.

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

[9] *Junson v. Martinez*, G.R. No. 141324, July 8, 2003, 405 SCRA 390, 393.

[10] *Toriano v. Trieste*, G.R. No. 146937, January 23, 2007, 512 SCRA 264, 267-268; *Madrigal v. Court of*

Appeals, G.R. No. 142944, April 15, 2005, 456 SCRA 247, 256.

[11] Catholic Bishop of Balanga v. Court of Appeals, G.R. No. 112519, November 14, 1996, 332 Phil. 206, 217.

[12] It is only on appeal that petitioners posit the contention that Juan Gabatan and his siblings were co-owners in equal shares of Lot 3095 C-5 since they allegedly inherited the same from their parents. However, it is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal (Multi-Reality Development Corporation v. Makati Tuscany Condominium Corporation, G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23). In this instance, petitioners conceded in their answer and other pleadings with the court a quo that the subject property was owned by Juan Gabatan and their claim of ownership was based on their status as heirs of Juan Gabatan.

[13] Heirs of Yaptinchay v. del Rosario, G.R. No. 124320 March 2, 1999, 304 SCRA 18, 23.

[14] G.R. No. L-7644, November 27, 1956, 100 Phil. 364, 378.

[15] 182 SCRA 119, 128 (1990).

[16] G.R. No. 154645, 434 SCRA 260, 274 (2004).

[17] 342 Phil. 302, 313 (1997).

[18] G.R. No. 155555, 467 SCRA 184, 199 (2005).

[19] Record, pp. 251 and 415.

[20] Rollo, p. 44.

[21] The printed notation on the upper left hand corner of Exhibit A states "Municipal Form No. 102 - (Revised on Dec. 1, 195X)." The last digit of the year is not clear and appears to be either 1953 or 1958. In any event, considering that respondent's birth date is December 17, 1950, the Court believes that it is impossible that respondent's true birth certificate would use a form that appears to have only come into existence after her birth.

[22] Exhibit 1 is a certified true copy of respondent's birth certificate which was identified by witness Rosita Vidal of the Local Civil Registrar's Office, Cagayan de Oro. It is identical in material respects to Exhibit 8 which was identified by witness Maribeth Cacho of the National Statistics Office, Manila.

[23] TSN of Ms. Vidal's Testimony dated February 16, 1993 at p. 5 and TSN of Ms. Cacho's Deposition dated June 16, 1993 at p. 6.

[24] TSN of Ms. Vidal's Testimony dated February 16, 1993 at p. 6 and TSN of Ms. Cacho's Deposition dated June 16, 1993 at p. 8.

[25] TSN of Ms. Vidal's Testimony dated February 16, 1993 at p. 5.

[26] Id. at. 6-7.

[27] TSN of Ms. Cacho's Deposition dated June 16, 1993 at p. 9.

[28] CA Decision, p. 14; rollo, p. 29.

[29] TSN of Frisco Lawan's testimony dated December 13, 1990 at p. 8.

[30] Justa Gabatan Nagac was the sister of Juan Gabatan.

[31] TSN of respondent's testimony dated March 31, 1992 at p. 43.

[32] Supra, at note 5.

[33] RTC Decision at pp. 8-9; rollo, pp. 44-45.

[34] CA Decision at pp. 14-16; rollo, pp. 29-31.

[35] TSN of the Deposition of Felicisima Nagac Pacana dated July 8, 1992 at pp. 7, 8, 15, 21, 27-28 and 38-39.

[36] Rule 130, Section 3, Rules of Court.

[37] G.R. No. 146586, January 26, 2005, 449 SCRA 299, 313.

[38] Rule 132, Sections 24 and Section 25 of the 1989 Rules of Evidence and the present Rules of Court are similarly worded.

[39] Rule 132, Section 24.

[40] Rule 132, Section 25.

[41] Supra note 35, at p. 28.

[42] Supra note 31, at p. 7.

[43] Id. at 36

[44] Id. at 40; see also rollo, p. 51.

[45] The complaint was filed on March 15, 1989 and the amended complaint was filed on June 20, 1989; Records, at pp. 1 and 38.

[46] Supra note 31, at p. 40.

[47] G.R. No. 155394, February 17, 2005; 451 SCRA 749.

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