JAIME ABALOS AND SPOUSES FELIX SALAZAR AND CONSUELO SALAZAR, GLICERIO ABALOS, HEIRS OF AQUILINO ABALOS, NAMELY: SEGUNDA BAUTISTA, ROGELIO ABALOS, DOLORES A. ROSARIO, FELICIDAD A...

G.R. No. 175444. December 14, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is a petition for review on certiorari seeking to set aside the Decision[1] dated June 30, 2006 and Resolution[2] dated November 13, 2006 by the Court of Appeals (CA) in CA-G.R. SP No. 91887. The assailed Decision reversed and set aside the Decision[3] dated June 14, 2005 of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, while the questioned Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

On July 24, 1996, herein respondents filed a Complaint for Recovery of Possession and Damages with the Municipal Trial Court (MTC) of Binmaley, Pangasinan against Jaime Abalos (Jaime) and the spouses Felix and Consuelo Salazar. Respondents contended that: they are the children and heirs of one Vicente Torio (Vicente) who died intestate on September 11, 1973; at the time of the death of Vicente, he left behind a parcel of land measuring 2,950 square meters, more or less, which is located at San Isidro Norte, Binmaley, Pangasinan; during the lifetime of Vicente and through his tolerance, Jaime and the Spouses Salazar were allowed to stay and build their respective houses on the subject parcel of land; even after the death of Vicente, herein respondents allowed Jaime and the Spouses Salazar to remain on the disputed lot; however, in 1985, respondents asked Jaime and the Spouses Salazar to vacate the subject lot, but they refused to heed the demand of respondents forcing respondents to file the complaint.[4]

Jaime and the Spouses Salazar filed their Answer with Counterclaim, denying the material allegations in the Complaint and asserting in their Special and Affirmative Defenses that: respondents' cause of action is barred by acquisitive prescription; the court a quo has no jurisdiction over the nature of the action and the persons of the defendants; the absolute and exclusive owners and possessors of the disputed lot are the deceased predecessors of defendants; defendants and their predecessors-in-interest had been in actual, continuous and peaceful possession of the subject lot as owners since time immemorial; defendants are faithfully and religiously paying real property taxes on the disputed lot as evidenced by Real Property Tax Receipts; they have continuously introduced improvements on the said land, such as houses, trees and other kinds of ornamental plants which are in existence up to the time of the filing of their Answer.[5]

On the same date as the filing of defendants' Answer with Counterclaim, herein petitioners filed their Answer in Intervention with Counterclaim. Like the defendants, herein petitioners claimed that their predecessors-in-interest were the absolute and exclusive owners of the land in question; that petitioners and their predecessors had been in

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possession of the subject lot since time immemorial up to the present; they have paid real property taxes and introduced improvements thereon.6

After the issues were joined, trial ensued.

On December 10, 2003, the MTC issued a Decision, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing consideration[s], the Court adjudged the case in favor of the plaintiffs and against the defendants and defendants-intervenors are ordered to turn over the land in question to the plaintiffs (Lot Nos. 869 and 870, Cad. 467-D. Binmaley Cadastre located in Brgy. San Isidro Norte, Binmaley, Pangasinan with an area of 2,950 sq. m., more or less, bounded and described in paragraph 3 of the Complaint[)]; ordering the defendants and defendants-intervenors to remove their respective houses standing on the land in dispute; further ordering the defendants and defendants- intervenors, either singly or jointly to pay the plaintiffs land rent in the amount of P12,000.00 per year to be reckoned starting the year 1996 until defendants and defendants-intervenors will finally vacate the premises; furthermore, defendants and defendants-intervenors are also ordered to pay, either singly or jointly, the amount of P10,000.00 as and by way of attorney's fees and costs of suit.
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> SO ORDERED.[7]

Jaime and the Spouses Salazar appealed the Decision of the MTC with the RTC of Lingayen, Pangasinan.[8] Herein petitioners, who were intervenors, did not file an appeal.

In its Decision dated June 14, 2005, the RTC ruled in favor of Jaime and the Spouses Salazar, holding that they have acquired the subject property through prescription. Accordingly, the RTC dismissed herein respondents' complaint.

Aggrieved, herein respondents filed a petition for review with the CA assailing the Decision of the RTC.

On June 30, 2006, the CA promulgated its questioned Decision, the dispositive portion of which reads, thus:

> WHEREFORE, the petition is GRANTED. The Decision dated June 14, 2005 of the Regional Trial Court, Branch 69, Lingayen, Pangasinan is hereby REVERSED and SET ASIDE. In its stead, a new one is entered reinstating the Decision dated December 10, 2003 of the Municipal Trial Court of Binmaley, Pangasinan.
>
> SO ORDERED.[9]

Jaime and the Spouses Salazar filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution dated November 13, 2006.

Hence, the instant petition based on a sole assignment of error, to wit:

> THE COURT OF APPEALS ERRED IN NOT APPRECIATING THAT THE PETITIONERS HEREIN ARE NOW THE ABSOLUTE AND EXCLUSIVE OWNERS OF THE LAND IN QUESTION BY VIRTUE OF ACQUISITIVE PRESCRIPTION.[10]

The main issue raised by petitioners is whether they and their predecessors-in-interest possessed the disputed lot in the concept of an owner, or whether their possession is by mere tolerance of respondents and their predecessors-in-interest. Corollarily, petitioners claim that the due execution and authenticity of the deed of sale upon which respondents' predecessors-in-interest derived their ownership were not proven during trial.

The petition lacks merit.

Preliminarily, the Court agrees with the observation of respondents that some of the petitioners in the instant petition were the intervenors[11] when the case was filed with the MTC. Records would show that they did not

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appeal the Decision of the MTC.[12] The settled rule is that failure to perfect an appeal renders the judgment final and executory.[13] Hence, insofar as the intervenors in the MTC are concerned, the judgment of the MTC had already become final and executory.

It also bears to point out that the main issue raised in the instant petition, which is the character or nature of petitioners' possession of the subject parcel of land, is factual in nature.

Settled is the rule that questions of fact are not reviewable in petitions for review on certiorari under Rule 45 of the Rules of Court.[14] Section 1 of Rule 45 states that petitions for review on certiorari "shall raise only questions of law which must be distinctly set forth."

Doubtless, the issue of whether petitioners possess the subject property as owners, or whether they occupy the same by mere tolerance of respondents, is a question of fact. Thus, it is not reviewable.

Nonetheless, the Court has, at times, allowed exceptions from the abovementioned restriction. Among the recognized exceptions are the following:

> (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
> (b) When the inference made is manifestly mistaken, absurd, or impossible;
> (c) When there is grave abuse of discretion;
> (d) When the judgment is based on a misapprehension of facts;
> (e) When the findings of facts are conflicting;
> (f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
> (g) When the CA's findings are contrary to those by the trial court;
> (h) When the findings are conclusions without citation of specific evidence on which they are based;
> (i) 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;
> (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
> (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[15]

In the present case, the findings of fact of the MTC and the CA are in conflict with those of the RTC.

After a review of the records, however, the Court finds that the petition must fail as it finds no error in the findings of fact and conclusions of law of the CA and the MTC.

Petitioners claim that they have acquired ownership over the disputed lot through ordinary acquisitive prescription.

Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.[16] Ordinary acquisitive prescription requires possession in good faith and with just title for ten (10) years.[17] Without good faith and just title, acquisitive prescription can only be extraordinary in character which requires uninterrupted adverse possession for thirty (30) years.[18]

Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the owner thereof, and could transmit his ownership.[19] There is "just title" when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.[20]

In the instant case, it is clear that during their possession of the property in question, petitioners acknowledged

ownership thereof by the immediate predecessor-in-interest of respondents. This is clearly shown by the Tax Declaration in the name of Jaime for the year 1984 wherein it contains a statement admitting that Jaime's house was built on the land of Vicente, respondents' immediate predecessor-in- interest.[21] Petitioners never disputed such an acknowledgment. Thus, having knowledge that they nor their predecessors-in-interest are not the owners of the disputed lot, petitioners' possession could not be deemed as possession in good faith as to enable them to acquire the subject land by ordinary prescription. In this respect, the Court agrees with the CA that petitioners' possession of the lot in question was by mere tolerance of respondents and their predecessors-in-interest. Acts of possessory character executed due to license or by mere tolerance of the owner are inadequate for purposes of acquisitive prescription.[22] Possession, to constitute the foundation of a prescriptive right, must be en concepto de dueño, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.[23]

Moreover, the CA correctly held that even if the character of petitioners' possession of the subject property had become adverse, as evidenced by their declaration of the same for tax purposes under the names of their predecessors-in-interest, their possession still falls short of the required period of thirty (30) years in cases of extraordinary acquisitive prescription. Records show that the earliest Tax Declaration in the name of petitioners was in 1974. Reckoned from such date, the thirty-year period was completed in 2004. However, herein respondents' complaint was filed in 1996, effectively interrupting petitioners' possession upon service of summons on them.24 Thus, petitioners’ possession also did not ripen into ownership, because they failed to meet the required statutory period of extraordinary prescription.

This Court has held that the evidence relative to the possession upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish the prescription.[25] In the present case, the Court finds no error on the part of the CA in holding that petitioners failed to present competent evidence to prove their alleged good faith in neither possessing the subject lot nor their adverse claim thereon. Instead, the records would show that petitioners' possession was by mere tolerance of respondents and their predecessors-in-interest.

Finally, as to the issue of whether the due execution and authenticity of the deed of sale upon which respondents anchor their ownership were not proven, the Court notes that petitioners did not raise this matter in their Answer as well as in their Pre-Trial Brief. It was only in their Comment to respondents' Petition for Review filed with the CA that they raised this issue. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court.26 They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.[27]

Even granting that the issue of due execution and authenticity was properly raised, the Court finds no cogent reason to depart from the findings of the CA, to wit:

> x x x x
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> Based on the foregoing, respondents [Jaime Abalos and the Spouses Felix and Consuelo Salazar] have not inherited the disputed land because the same was shown to have already been validly sold to Marcos Torio, who, thereupon, assigned the same to his son Vicente, the father of petitioners [herein respondents]. A valid sale was amply established and the said validity subsists because the deed evidencing the same was duly notarized.
>
> There is no doubt that the deed of sale was duly acknowledged before a notary public. As a notarized document, it has in its favor the presumption of regularity and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face.[28]

Indeed, settled is the rule in our jurisdiction that a notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise, the document should be upheld.[29] In the instant case, petitioners' bare denials will not suffice to overcome the presumption of regularity of the assailed deed of sale.

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 91887 are AFFIRMED.

SO ORDERED.

Velasco, Jr., Abad, Mendoza, and Perlas-Bernabe, JJ., concur..

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring ; Annex “J” to Petition, rollo, pp. 87-98.

[2] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Asuncion-Vicente and Vicente S.E. Veloso, concurring; Annex “L” to Petition, id. at 107-109.

[3] Records, pp. 316-324.

[4] Id. at 1-3.

[5] Id. at 34-39.

[6] Id. at 10-16.

[7] Id. at 273.

[8] See Notice of Appeal, id. at 274.

[9] CA rollo, p. 94

[10] Rollo, p. 8.

[11] Except for Jaime Abalos and the spouses Felix and Consuelo Salazar, all petitioners in the instant petition were intervenors in the case filed with the MTC.

[12] See Notice of Appeal, records, p. 274.

[13] Province of Camarines Sur v. Heirs of Agustin Pato, G.R. No. 151084, July 2, 2010, 622 SCRA 644, 652, citing M.A. Santander Construction, Inc. v. Villanueva, G.R. No. 136477, November 10, 2004, 441 SCRA 525, 530.

[14] Heirs of Felicidad Vda. de Dela Cruz v. Heirs of Pedro T. Fajardo, G.R. No. 184966, May 30, 2011, 649 SCRA 463, 470.

[15] Spouses. Andrada v. Pilhino Sales Corporation, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 10.

[16] Civil Code, Art. 1117.

[17] Civil Code, Art. 1134.

[18] Civil Code, Art. 1137; Tan v. Ramirez, G.R. No. 158929, August 3, 2010, 626 SCRA 327, 336; Aguirre v. Heirs of Lucas Villanueva, G.R. No. 169898, October 27, 2006, 505 SCRA 855, 860.

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[19] Villanueva v. Branoco, G.R. No. 172804, January 24, 2011, 640 SCRA 308, 320; Imuan v. Cereno, G.R. No. 167995, September 11, 2009, 599 SCRA 423, 433.

[20] Id.

[21] Exhibit “K,” records, p. 264.

[22] Lamsis v. Donge-e, G.R. No. 173021, October 20, 2010, 634 SCRA 154, 172.

[23] Esguerra v. Manantan, G.R. No. 158328, February 23, 2007, 516 SCRA 561, 573; Marcelo v. Court of Appeals, G.R. No. 131803, April 14, 1999, 305 SCRA 800, 807-808.

[24] Article 1120 of the Civil Code provides that “[p]ossession is interrupted for the purposes of prescription, naturally or civilly.” Article 1123 of the same Code further provides that “[c]ivil interruption is produced by judicial summons to the possessor.”

[25] Heirs of Juanita Padilla v. Magdua, G.R. No. 176858, September 15, 2010, 630 SCRA 573, 584.

[26] American Home Insurance Co. of New York v. F.F. Cruz & Co., Inc., G.R. No. 174926, August 10, 2011.

[27] Id.

[28] CA rollo, pp. 91-92.

[29] Spouses Palada v. Solidbank Corporation, G.R. No. 172227, June 29, 2011; Emilio v. Rapal, G.R. No. 181855, March 30, 2010, 617 SCRA 199, 202-203; Heirs of the Deceased Spouses Vicente S. Arcilla and Josefa Asuncion Arcilla v. Teodoro, G.R. No. 162886, August 11, 2008, 561 SCRA 545, 564.

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