

HEIRS OF BIENVENIDO AND ARACELI TANYAG, NAMELY: ARTURO TANYAG, AIDA T. JOCSON AND ZENAIDA T. VELOSO, PETITIONERS, VS. SALOME E. GABRIEL, NESTOR R. GABRIEL, LUZ GABRIEL-ARNEDO MA...*G.R. No. 175763. April 11, 2012*

Ponente: VILLARAMA, JR., J.

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This is a petition for review under Rule 45 which seeks to reverse the Decision[1] dated August 18, 2006 and Resolution[2] dated December 8, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 81224. The CA affirmed the Decision[3] dated November 19, 2003 of the Regional Trial Court of Pasig City, Branch 267 in Civil Case No. 67846 dismissing petitioners' complaint for declaration of nullity of Original Certificate of Title (OCT) No. 1035, reconveyance and damages, as well as respondents' counterclaims for damages and attorney's fees.

Subject of controversy are two adjacent parcels of land located at Ruhale, Barangay Calzada, Municipality of Taguig (now part of Pasig City, Metro Manila). The first parcel ("Lot 1") with an area of 686 square meters was originally declared in the name of Jose Gabriel under Tax Declaration (TD) Nos. 1603 and 6425 issued for the years 1949 and 1966, while the second parcel ("Lot 2") consisting of 147 square meters was originally declared in the name of Agueda Dinguinbayan under TD Nos. 6418 and 9676 issued for the years 1966 and 1967.[4] For several years, these lands lined with bamboo plants remained undeveloped and uninhabited.

Petitioners claimed that Lot 1 was owned by Benita Gabriel, sister of Jose Gabriel, as part of her inheritance as declared by her in a 1944 notarized instrument ("Affidavit of Sale") whereby she sold the said property to spouses Gabriel Sulit and Cornelia Sanga. Said document states:

DAPAT MALAMAN NG LAHAT NG MAKABABASA

Na, akong Benita Gabriel, balo sa nasirang Calixto Lontoc, Filipina may karapatang gulang naninirahan sa nayon ng Palingon, Tagig, Rizal, x x x sa pamamagitan nitoy

ISINASAYSAY KO AT PINAGTITIBAY

1.) Na, sarili ko at tunay na pagaari ang isang lagay na lupang kawayanan na sapagkat itoy kabahagui ko sa aking kapatid na [J]ose Gabriel, na itoy mana ko sa aking nasirang ama Mateo Gabriel sa kami lamang dalawa ng aking kapatid na binabangit ko na Jose Gabriel siyang mga anak at tagapagmana ng aming amang nasirang Mateo Gabriel, maliban sa amin ay wala nang iba, kayat kami ay naghati sa mga ari-arian na na iwan sa amin ng nasirang ama namin na Mateo Gabriel, na ang lupang kawayanang itoy may nakatanim na walong (8) punong kawayan at na sa pook na kung pamagatan ay Ruhale nayon ng Calzada, Tagig, Rizal, at na sa loob ng mga kahanganan at sukat na sumusunod[:]

Na, ang kahangan sa Hilagaan Sapang Ruhale at Vicente Bunye, sa Amihanan Felipe Pagkalinawan, sa Timugan Juan Flores, at sa Habagatan Apolonio Ocol may sukat na 6 areas at 85 centiareas may halagan

amillarada na P80.00) Pesos alinsunod sa Tax Blg. 20037, sa pangalan ng aking kapatid na Jose Gabriel. Na, ang lupang itoy hindi natatala sa bisa ng batas Blg. 496 ni sa susog gayon din sa Hipotecaria Espanola itoy may mga mojon bato ang mga panulok at walang bakod.

2.) Na, alang-alang sa halagang SIYAMNAPO AT ANIM (P96.00) na Pisong salaping guinagamit dito sa Filipinas na bago dumating ang mga sandaling itoy tinaggap ko at ibinayad sa akin ng boong kasiyahang loob ko ng magasawang GABRIEL SULIT AT CORNELIA SANGA, mga Filipinos may mga karapatang gulang mga naninirahan sa nayon ng Calzada, Tagig, Rizal, ngayon ay inilipat ko at ipinagbili ng bilihang tuluyan (Venta real soluta) ang isinasaysay kong lupang kawayanan sa itaas nito ng nasabi halagang SIYAMNAPO AT ANIM (P96.00) na Piso at sa nabanguit na magasawang GABRIEL SULIT AT CORNELIA SANGA, gayon din sa lahat ng mga tagapagmana nila, ngayong mga arao na ito ay ang may hawak at namamahala ng lupang itoy ang mga nakabili sa akin na magasawang GABRIEL SULIT AT CORNELIA SANGA.

3.) Na, ang kasulatang itoy ng bilihan ay nais na itala sa bisa ng batas Blg. 3344.

NA SA KATUNAYAN NG LAHAT NG ITOY ako ay lumagda sa kasulatang ito dito sa Tagig, Rizal, ngayong ika - 28 ng Junio 1944.

(Nilagdaan) BENITA GABRIEL[5]

Lot 1 allegedly came into the possession of Benita Gabriel's own daughter, Florencia Gabriel Sulit, when her father-in-law Gabriel Sulit gave it to her as part of inheritance of his son, Eliseo Sulit who was Florencia's husband. Florencia Sulit sold the same lot to Bienvenido S. Tanyag, father of petitioners, as evidenced by a notarized deed of sale dated October 14, 1964.[6] Petitioners then took possession of the property, paid the real estate taxes due on the land and declared the same for tax purposes, as shown by TD No. 11445 issued in 1969 in the name of Bienvenido's wife, Araceli C. Tanyag; TD No. 11445 cancelled TD No. 6425 in the name of Jose Gabriel. TD Nos. 3380 and 00486 also in the name of Araceli Tanyag were issued in the years 1974 and 1979.[7]

As to Lot 2, petitioners averred that it was sold by Agueda Dinguinbayan to Araceli Tanyag under Deed of Sale executed on October 22, 1968. Thereupon, petitioners took possession of said property and declared the same for tax purposes as shown by TD Nos. 11361, 3395, 120-014-00482, 120-00-014-20-002-000, C-014-00180 and D-014-00182 issued for the years 1969, 1974, 1979, 1985, 1991 and 1994.[8] Petitioners claimed to have continuously, publicly, notoriously and adversely occupied both Lots 1 and 2 through their caretaker Juana Quinones[9]; they fenced the premises and introduced improvements on the land.[10]

Sometime in 1979, Jose Gabriel, father of respondents, secured TD No. 120-014-01013 in his name over Lot 1 indicating therein an increased area of 1,763 square meters. Said tax declaration supposedly cancelled TD No. 6425 over Lot 1 and contained the following inscription[11]:

Note: Portions of this Property is Also Declared

in the name of Araceli C. Tanyag under
T.D.#120-014-00858 686 sq. m.

Also inscribed on TD No. 120-014-00858[12] (1979) in the name of Araceli Tanyag covering Lot 1 are the following:

This property is also covered by T.D. #120-014-01013
in the name of Jose P. Gabriel
1-8-80

which notation was carried into the 1985, 1990 and 1991 tax declarations, all in the name of Araceli Tanyag.

On March 20, 2000, petitioners instituted Civil Case No. 67846 alleging that respondents never occupied the whole 686 square meters of Lot 1 and fraudulently caused the inclusion of Lot 2 in TD No. 120-014-01013 such that Lot 1 consisting of 686 square meters originally declared in the name of Jose Gabriel was increased to 1,763 square meters. They contended that the issuance of OCT No. 1035 on October 28, 1998 over the subject land in the name of respondents heirs of Jose Gabriel was null and void from the beginning.[13]

On the other hand, respondents asserted that petitioners have no cause of action against them for they have not established their ownership over the subject property covered by a Torrens title in respondents' name. They further argued that OCT No. 1035 had become unassailable one year after its issuance and petitioners failed to establish that it was irregularly or unlawfully procured.[14]

Respondents' evidence showed that the subject land was among those properties included in the Extrajudicial Settlement of Estate of Jose P. Gabriel[15] executed on October 5, 1988, covered by TD No. B-014-00643 (1985) in the name of Jose Gabriel. Respondents declared the property in their name but the tax declarations (1989, 1991 and 1994) carried the notation that portions thereof (686 sq. ms.) are also declared in the name of Araceli Tanyag. On October 28, 1998, OCT No. 1035[16] was issued to respondents by the Register of Deeds of Pasig, Metro Manila under Decree No. N-219177 pursuant to the Decision dated September 20, 1996 of the Land Registration Court in LRC Case No. N-11260, covering Lot 1836 MCadm-590-D, Taguig Cadastral Mapping, Plan Ap-04-002253, with an area of 1,560 square meters.

On the other hand, respondents' TD Nos. D-014-00839 and D-014-01923 issued in 1993 and 1999 respectively, showed that respondents sold 468 square meters of Lot 1 to Jayson Sta. Barbara.[17] The segregation of said 468 square meters pertaining to Jayson Sta. Barbara was reflected in the approved survey plan of Lot 1836 prepared by respondents' surveyor on March 18, 2000.[18]

At the trial, petitioners presented their witness Arturo Tanyag, son of Bienvenido Tanyag and Araceli Tanyag who died on March 30, 1968 and October 30, 1993, respectively. He testified that according to Florencia Sulit, Benita Gabriel-Lontoc and her family were the ones in possession of Lot 1 since 1944; Benita Gabriel had executed an Affidavit of Sale declaring said property as her inheritance and conveying the same to spouses Gabriel and Cornelia Sulit. He affirmed that they had been in possession of Lot 1 from the time Bienvenido Tanyag bought the land from Florencia Sulit in 1964. Based on the boundaries indicated in the tax declaration, they fenced the property, installed Juana Quinones as their caretaker who also attended to the piggery, put up an artesian well and planted some trees. From 1964 up to 1978, nobody disturbed them in their possession or claimed ownership of the land; four years after acquiring Lot 1, they also purchased the adjacent property (Lot 2) to expand their piggery. Lot 2 was also separately declared for tax purposes after their mother purchased it from Agueda Dinguinbayan. He had personally witnessed the execution of the 1968 deed of sale including its notarization, and was also present during the physical turn over of Lot 2 by the seller. In fact, he was one of the instrumental witnesses to the deed of sale and identified his signature therein. He further described the place as inaccessible at that time as there were no roads yet and they had to traverse muddy tracks to reach their property.[19]

Arturo further testified that the first time they met Jose Gabriel was when the latter borrowed from their mother all the documents pertaining to their property. Jose Gabriel came looking for a piece of property which he claims as his but he had no documents to prove it and so they showed him their documents pertaining to the subject property; out of the goodness of her mother's heart, she lent those documents to her brother Jose Gabriel. During the cadastral survey conducted in 1976, they had both lots surveyed in preparation for their consolidation under one tax declaration. However, they did not succeed in registering the consolidated lots as they discovered that there was another tax declaration covering the same properties and these were applied for titling under the name of Jose Gabriel sometime in 1978 or 1980, which was after the time said Jose Gabriel borrowed the documents

from their mother. No notice of the hearings for application of title filed by Jose Gabriel was received by them. They never abandoned the property and their caretaker never left the place except to report to the police when she was being harassed by the respondents. He also recalled that respondents had filed a complaint against them before the barangay but since no agreement was reached after several meetings, they filed the present case.[20]

The next witness for petitioners was Juana Quinones, their caretaker who testified that she had been staying on petitioners' property since 1964 or for 35 years already. She had built a nipa hut and artesian well, raised piggery and poultry and planted some root crops and vegetables on the land. At first there was only one parcel but later the petitioners bought an additional lot; Arturo Tanyag gave her money which she used for the fencing of the property. During all the time she occupied the property there was nobody else claiming it and she also had not received any notice for petitioners concerning the property, nor the conduct of survey on the land. On cross-examination, she admitted that she was living alone and had no Voter's ID or any document evidencing that she had been a resident there since 1964. Although she was living alone, she asks for help from other persons in tending her piggery.[21]

Angelita Sulit-delos Santos, cousin of petitioners and also of respondents, testified that she came to know the subject property because according to her paternal grandfather Gabriel Sta. Ana Sulit, her maternal grandmother Benita Gabriel-Lontoc mortgaged the property to him. It was Benita Gabriel Lontoc who took care of her, her siblings and cousins; they lived with her until her death. She identified the signature of Benita Gabriel in the 1944 Affidavit of Sale in favor of Gabriel Sulit. Lot 1 consisting of 600 square meters was vacant property at that time but her family was in possession thereof when it was sold to Gabriel Sulit; it was her father Eliseo Sulit and uncle Hilario Sulit, who were in charge of their property. On cross-examination, she was asked details regarding the supposed mortgage of Lot 1 to Gabriel Sulit but she admitted she does not know anything as she was still very young then.[22]

Respondents' first witness was Roberto Gabriel Arnedo, son of Luz Gabriel-Arnedo. He testified that when he was about 5 or 6 years old (1953 or 1954), his grandfather Jose Gabriel used to bring him along to visit the subject property consisting of 1,763 square meters based on the tax declaration and OCT. They had picnics and celebrate his grandfather's birthday there. He recalled accompanying his grandfather in overseeing the planting of gumamela which served as the perimeter fence. Jose Gabriel had not mentioned anything about the claim of petitioners over the same land; Jose Gabriel handed the documents pertaining to the land to his eldest aunt and hence it now belongs to them.[23] On cross-examination, he claimed that during those years he had visited the land together with his grandfather, he did not see Florencia Sulit and her family.[24]

Virginia Villanueva, daughter of Salome Gabriel, testified that they acquired the subject property from their grandfather Jose Gabriel who had a tax declaration in his name. Her mother furnished them with documents such as tax declarations and the extrajudicial settlement of the estate of Jose Gabriel; they also have an approved survey plan prepared for Salome Gabriel. She does not know the petitioners in this case.[25] On cross-examination, she said that the subject property was inherited by Jose Gabriel from his father Mateo Gabriel; Jose Gabriel was the sole owner of the land while Benita Gabriel has separate properties in Palingon and Langkokak.[26] Though they are not actually occupying the property, they visit the place and she does not know anybody occupying it, except for the portion (486 square meters) which petitioners sold to Sta. Barbara. A nine-door apartment was built on the said portion without their permission. She had talked to both Sta. Barbara and with Arturo Tanyag they had meetings before the barangay; however, petitioners filed the present case in court. She insisted that there is nobody residing in the subject property; there is still the remaining 901 square meters which is owned by their mother. She admitted there were plants on the land but she does not know who actually planted them; it was her grandfather who built a wooden fence and gumamela in the 1960s. As to the

hearings on the application for title, she had not attended the same; she does not know whether the petitioners were notified of the said hearings. She also caused the preparation of the survey plan for Salome Gabriel. On the increased area of the property indicated in the later tax declarations, she admitted the discrepancy but said there were barangay roads being built at the time.[27]

Esmeraldo Ramos, Municipal Assessor of Taguig, testified that he was formerly a Land Appraiser in the Office of the Municipal Assessor of Taguig and in the course of his duties had certified one of the tax declarations in the name of respondents (TD No. EL-014-10585). He identified and verified said document and the other tax declarations submitted in court by the respondents. He admitted that on January 10, 1980, they made the entry on TD No. 6425 in the name of Jose Gabriel that the same was cancelled by TD No. 120-014-01013 also in the name of Jose Gabriel who presented a supposed deed of sale in favor of Araceli Tanyag which caused the earlier cancellation of TD No. 6425 in his name. However, upon investigation they found out that the seller Florencia Sulit was not the owner because the declared owner was Jose Gabriel; even the deed of sale recognized that the property was declared in the name of Jose Gabriel. They also discovered from the cadastral survey and tax mapping of Taguig that the property is in the name of Jose Gabriel both in the Bureau of Lands and Municipal Assessor's Office. As far as he knows, it was Jose Gabriel who owned the subject property which he usually visited; he recalled that around the late 70's and 80's, he ordered the fencing of barbed wire and bamboo stalks on the land which is just 3 lots away from his own property. As to the discrepancy in the area of the property as originally declared by Jose Gabriel, he explained that the boundaries in the original tax declaration do not change but after the land is surveyed, the boundaries naturally would be different because the previous owner may have sold his property or the present owner inherits the property from his parents. He admitted that the tax declaration is just for tax purposes and not necessarily proof of ownership or possession of the property it covers.[28]

Respondents' last witness was Antonio Argel who testified that he had resided for 52 years on a land near the subject property and as far as he knows it was Jose Gabriel who owns it and planted thereon. On cross-examination, he admitted that Jose Gabriel was not in physical possession of the property. He just assumed that the present occupants of the property were allowed by Jose Gabriel to stay therein because he is the owner. There is an apartment and three small houses existing on the property, and about five families are living there. He confirmed that there is a piggery being maintained by a certain Juana who had been residing there maybe for fifteen years already.[29]

In rebuttal, petitioners presented two witnesses who are owners of properties adjoining that of the subject land. Rodante Domingo testified that it was only now did he learn that the property of Arturo Tanyag is already titled in the name of respondents. He was not aware of the titling proceeding because he never received any notice as adjoining owner. His own property is already titled in his name and he even asked Arturo Tanyag to act as a witness in his application for titling.[30] On the other hand, Dado Dollado testified that he acquired his property in 1979. He likewise affirmed that he did not receive any notice of the proceedings for application for titling filed by respondents and it was only now that he learned from Arturo Tanyag that the subject property was already titled in the names of respondents.[31]

The last rebuttal witness for petitioners was Dominador Dinguinbayan Ergueza, son of Agueda Dinguinbayan. He testified that the subject property was formerly owned by his mother and the present owner is Araceli Tanyag who bought the same from his mother in 1968. He described the boundaries of the property in relation to the adjoining owners at that time; presently, the left portion is already a street (Rujale St.) going towards the sea. He admitted that his wife, Livina Ergueza was an instrumental witness in the 1968 deed of sale in favor of Araceli Tanyag.[32]

In its decision, the trial court dismissed the complaint as well as the counterclaim, holding that petitioners failed to establish ownership of the subject property and finding the respondents to be the declared owners and legal

possessors. It likewise ruled that petitioners were unable to prove by preponderance of evidence that respondents acquired title over the property through fraud and deceit.

Petitioners appealed to the CA which affirmed the trial court's ruling. The CA found that apart from the Affidavit executed by Benita Gabriel in 1944 claiming that she inherited Lot 1 from their father, Mateo Gabriel, there is no evidence that she, not Jose Gabriel, was the true owner thereof. It noted that just four years after Benita Gabriel's sale of the subject property to the Sulit spouses, Jose Gabriel declared the same under his name for tax purposes, paying the corresponding taxes. The appellate court stressed that petitioners' allegation of bad faith was not proven.

Petitioners' motion for reconsideration was likewise denied by the CA. Hence, this petition.

Petitioners assail the CA in not finding that the respondents obtained OCT No. 1035 in their names fraudulently and in bad faith. They also claim to have acquired ownership of the subject lots by virtue of acquisitive prescription.

The issues presented are: (1) whether respondents committed fraud and bad faith in registering the subject lots in their name; and (2) whether petitioners acquired the property through acquisitive prescription.

Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein.[33] Thus, notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.[34]

An action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts.[35] The totality of the evidence on record established that it was petitioners who are in actual possession of the subject property; respondents merely insinuated at occasional visits to the land. However, for an action for reconveyance based on fraud to prosper, this Court has held that the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.[36]

The CA correctly observed that the only evidence of Benita Gabriel's supposed title was the 1944 Affidavit of Sale whereby Benita Gabriel claimed sole ownership of Lot 1 as her inheritance from their father, Mateo Gabriel. The property until 1949 was still declared in the name Jose Gabriel despite the 1944 sale executed by Benita Gabriel in favor of spouses Gabriel and Cornelia Sulit. As to the alleged fraud perpetrated by Jose Gabriel and respondents in securing OCT No. 1035 in their name, this was clearly not proven as Arturo Tanyag testified merely that Jose Gabriel borrowed their documents pertaining to the property. No document or testimony was presented to show that Jose Gabriel employed deceit or committed fraudulent acts in the proceedings for titling of the property.

However, the CA did not address the issue of acquisitive prescription raised by the petitioners. In their Complaint before the lower court, petitioners alleged –

15. Defendants never occupied the whole area of the lot covered by Tax Declaration No. 1603 (686 sq. m.) neither were they able to set foot on the property covered by Tax Declaration No. 6542 [sic] for the reason that those lots had been in actual, open continuous, adverse and notorious possession of the plaintiffs against the

whole world for more than thirty years which is equivalent to title.

x x x x[37]

Such character and length of possession of a party over a parcel of land subject of controversy is a factual issue. 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, as only questions of law shall be raised in such petitions. While this Court is not a trier of facts, if the inference drawn by the appellate court from the facts is manifestly mistaken, it may, in the interest of justice, review the evidence in order to arrive at the correct factual conclusions based on the record.[38]

In this case, the CA was mistaken in concluding that petitioners have not acquired any right over the subject property simply because they failed to establish Benita Gabriel's title over said property. The appellate court ignored petitioners' evidence of possession that complies with the legal requirements of acquiring ownership by prescription.

Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted.[39] Possession is open when it is patent, visible, apparent, notorious and not clandestine.[40] It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.[41]

On the matter of prescription, the Civil Code provides:

Art. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.

Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith. (Emphasis supplied.)

Petitioners' adverse possession is reckoned from 1969 with the issuance of TD No. 1145 in the name of Araceli Tanyag, which tax declaration cancelled TD No. 6425 in the name of Jose Gabriel.[42] It is settled that tax receipts and declarations are prima facie proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of actual possession of the property, they may become the basis of a claim for ownership.[43] Petitioners' caretaker, Juana Quinones, has since lived in a nipa hut, planted vegetables and tended a piggery on the land. Aside from paying taxes due on the property, petitioners also exercised other acts of ownership such as selling the 468-square meter portion to Sta. Barbara who had constructed thereon a nine-door apartment building.

It was only in 1979 that respondents began to assert a claim over the property by securing a tax declaration in the name of Jose Gabriel albeit over a bigger area than that originally declared. In 1998, they finally obtained an original certificate of title covering the entire 1,763 square meters which included Lot 1. Did these acts of respondents effectively interrupt the possession of petitioners for purposes of prescription?

We answer in the negative.

In the case of *Heirs of Marcelina Azardon-Crisologo v. Rañon*[44] this Court citing Article 1123 of the Civil Code[45] held that civil interruption takes place with the service of judicial summons to the possessor and not by filing of a mere Notice of Adverse Claim. Thus:

Article 1123 of the Civil Code is categorical. Civil interruption is produced by judicial summons to the possessor. Moreover, even with the presence of judicial summons, Article 1124 sets limitations as to when such summons shall not be deemed to have been issued and shall not give rise to interruption, to wit: 1) if it should be void for lack of legal solemnities; 2) if the plaintiff should desist from the complaint or should allow the proceedings to lapse; or 3) if the possessor should be absolved from the complaint.

Both Article 1123 and Article 1124 of the Civil Code underscore the judicial character of civil interruption. For civil interruption to take place, the possessor must have received judicial summons. None appears in the case at bar. The Notice of Adverse Claim which was filed by petitioners in 1977 is nothing more than a notice of claim which did not effectively interrupt respondents' possession. Such a notice could not have produced civil interruption. We agree in the conclusion of the RTC, which was affirmed by the Court of Appeals, that the execution of the Notice of Adverse Claim in 1977 did not toll or interrupt the running of the prescriptive period because there remains, as yet, a necessity for a judicial determination of its judicial validity. What existed was merely a notice. There was no compliance with Article 1123 of the Civil Code. What is striking is that no action was, in fact, filed by petitioners against respondents. As a consequence, no judicial summons was received by respondents. As aptly held by the Court of Appeals in its affirmance of the RTC's ruling, the Notice of Adverse Claim cannot take the place of judicial summons which produces the civil interruption provided for under the law. In the instant case, petitioners were not able to interrupt respondents' adverse possession since 1962. The period of acquisitive prescription from 1962 continued to run in respondents' favor despite the Notice of Adverse Claim. (Emphasis supplied.)

From 1969 until the filing of this complaint by the petitioners in March 2000, the latter have been in continuous, public and adverse possession of the subject land for 31 years. Having possessed the property for the period and in the character required by law as sufficient for extraordinary acquisitive prescription, petitioners have indeed acquired ownership over the subject property. Such right cannot be defeated by respondents' acts of declaring again the property for tax purposes in 1979 and obtaining a Torrens certificate of title in their name in 1998.

This notwithstanding, we uphold petitioners' right as owner only with respect to Lot 1 consisting of 686 square meters. Petitioners failed to substantiate their claim over Lot 2 by virtue of a deed of sale from the original declared owner, Agueda Dinguinbayan. Respondents asserted that the 147 square meters covered by the tax declarations of Dinguinbayan being claimed by petitioners is not the same lot included in OCT No. 1035.

Under Article 434 of the Civil Code, to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two (2) things: first, the identity of the land claimed; and second, his title thereto. In regard to the first requisite, in an *accion reivindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof.[46] In this case, petitioners failed to identify Lot 2 by providing evidence of the metes and bounds thereof, so that the same may be compared with the technical description contained in OCT No. 1035, which would have shown whether Lot 2 consisting of 147 square meters was erroneously included in respondents' title. The testimony of Agueda Dinguinbayan's son would not suffice because said witness merely stated the boundary owners as indicated in the 1966 and 1967 tax declarations of his mother. On his part, Arturo Tayag claimed that he had the lots surveyed in the 1970s in preparation for the consolidation of the two parcels. However, no such plan was presented in court.

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated August 18, 2006 of the Court of Appeals in CA-G.R. CV No. 81224 is MODIFIED in that petitioners heirs of Bienvenido and Araceli Tanyag are

hereby declared the owners of 686 square meters previously declared under Tax Declaration Nos. 11445, 120-014-00486, 120-014-0085, B-014-00501, E-014-01446, C-014-00893 and D-014-00839 all in the name of Araceli Tanyag, which lot is presently covered by OCT No. 1035 issued by the Register of Deeds of Pasig, Metro Manila in the name of respondents Salome Gabriel, Nestor R. Gabriel, Luz Gabriel-Arnedo, Nora Gabriel-Calingo, Pilar Gabriel-Mendiola, Minerva Gabriel-Natividad and Erlinda Gabriel-Velasquez. Respondents are ORDERED to RECONVEY the said 686-square meter portion to the petitioners.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, pp. 57-68. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Eliezer R. De Los Santos and Fernanda Lampas Peralta concurring.

[2] Id. at 135. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Juan Q. Enriquez, Jr. and Fernanda Lampas Peralta concurring.

[3] Id. at 69-78. Penned by Judge Florito S. Macalino.

[4] Records, pp. 204-205, 213-214.

[5] Id. at 9.

[6] Id. at 10-11.

[7] Id. at 12-14.

[8] Id. at 25-31.

[9] Quintanes in some parts of the records.

[10] Records, p. 4.

[11] Id. at 212.

[12] Id. at 15. Inscription was dated 1-8-80.

[13] Id. at 2-7.

[14] Id. at 39-42.

[15] Id. at 199-202.

[16] Id. at 33.

[17] Id. at 19-20.

[18] Id. at 203.

[19] TSN, December 7, 2000, pp. 10-12, 14-26.

[20] Id. at 17, 31-43.

[21] TSN, February 13, 2001, pp. 5-15.

[22] TSN, April 26, 2001, pp. 3-21.

[23] TSN, June 26, 2001, pp. 3-11.

[24] Id. at 15-19.

[25] TSN, July 17, 2001, pp. 4-13.

[26] TSN, August 30, 2001, pp. 3-9.

[27] TSN, October 16, 2001, pp. 5-42.

[28] TSN, November 6, 2001, pp. 4-5, 8-27; TSN, November 22, 2001, pp. 4-5, 18-19.

[29] TSN, January 31, 2002, pp. 2-14.

[30] TSN, April 4, 2002, pp. 9-15.

[31] Id. at 16-25.

[32] TSN, October 3, 2002, pp. 2-13.

[33] *Naval v. Court of Appeals*, G.R. No. 167412, February 22, 2006, 483 SCRA 102, 113, citing *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 377 (2003).

[34] Id., citing *Heirs of Pomposa Saludaes v. Court of Appeals*, G.R. No. 128254, January 16, 2004, 420 SCRA 51, 56.

[35] *Llemos v. Llemos*, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 134, citing *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 126 and *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 47-48.

[36] *Antonio v. Santos*, G.R. No. 149238, November 22, 2007, 538 SCRA 1, 9, citing *Barrera v. Court of Appeals*, G.R. No. 123935, December 14, 2001, 372 SCRA 312, 316.

[37] Records, p. 5.

[38] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon*, G.R. No. 161720, November 22, 2005, 475 SCRA 731, 739.

[39] Art. 1118, Civil Code.

Art. 1118. Possession has to be in the concept of an owner, public, peaceful and uninterrupted.

[40] *Heirs of Marcelina Azañon-Crisologo v. Rañon*, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 404, citing *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, May 22, 1992, 209 SCRA 214, 224.

[41] Id.

[42] See *Heirs of Flores Restar v. Heirs of Dolores Cichon*, supra note 38, at 741.

[43] *Cequeña v. Bolante*, G.R. No. 137944, April 6, 2000, 330 SCRA 216, 226-228.

[44] Supra note 40 at 406-407.

[45] Art. 1123. Civil interruption is produced by judicial summons to the possessor.

[46] *Sampaco v. Lantud*, G.R. No. 163551, July 18, 2011, 654 SCRA 36, 50-51, citing *Spouses Hutchison v.*

Buscas, 498 Phil. 257, 262 (2005).

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