Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TOMASA J. SABELLINA, Petitioner,	**G.R. No. 187727**
- versus -	Present:
DOLORES BURAY, LEDENIA VILLAMOR, ARLENE MAGSAYO, LUDIMA ROMULO, RAMON CANADELLA, ROBERTO ACIDO, MARIO ESPARGUERA, RODRIGO ACIDO, RONNIE UBANGAN and CONCEPCION REBUSTO, Respondents.	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
	Promulgated: 02 SEP 2015

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DECISION

BRION, *J.*:

This is a petition for review on *certiorari* filed from the 16 December 2008 Decision and 26 March 2009 Resolution of the Court of Appeals *(CA)* in **CA-G.R. SP No. 01135-MIN**. Both were penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Elihu A. Ybañez.

ANTECEDENTS

On 8 November 2004, petitioner Tomasa J. Sabellina filed a complaint for **unlawful detainer** against the respondents Dolores Buray, Ledenia Villamor, Arlene Magsayo, Ludima Romulo, Ramon Canadella, Roberto Acido, Mario Esparguera, Rodrigo Acido, Ronnie Ubangan, and Concepcion Rebusto before the Municipal Circuit Trial Court *(MCTC)* of the Municipalities of Laguindingan-Gitagum, Misamis Oriental. The case was docketed as **Civil Case No. 469.**

Tomasa claimed that: (1) she is the owner in fee simple of a 13,267-square meter parcel of land in Mauswagon, Laguindingan, Misamis Oriental,

designated as Lot No. 13156-O *(subject lot)* and covered by Tax Declaration No. 024034; (2) the subject lot used to be a part of Lot No. 13156 which had been declared for tax purposes since 1948 in the name of her father, Demetrio Jaramillo; (3) she inherited the property after her parents' death pursuant to a Deed of Extrajudicial Settlement she executed with her co-heirs; and (4) she has possessed the property and has been paying realty taxes thereon since her father's death.

Tomasa further alleged that: (5) during the late 1980's, her late sister Teodosia Jaramillo Abellanosa gave the respondents permission to occupy the subject lot; (6) Tomasa allowed the respondents to construct their houses on the lot on condition that they would vacate the property when she needed it; (7) in 2002, she mortgaged the subject lot to the Rural Bank of Guitagum as security for a loan; (8) when she defaulted on the loan, she looked for a prospective buyer for the lot so she could pay off her debt; (9) in early 2003, she verbally requested the respondents to vacate the lot but they refused; (10) she referred the matter to the *Pangkat ng Tagapagkasundo* but they failed to reach a settlement; (11) finally, she sent a written demand to the respondents to vacate on 2 August 2004.

On 22 November 2004, the respondents filed their answer denying Tomasa's allegations. They claimed: (1) that the Department of Environment and Natural Resources (*DENR)* declared the subject lot alienable and disposable; (2) that they had possessed the subject lot in good faith since the 1970s and had acquired it through acquisitive prescription; (3) that they had introduced improvements on the lot by constructing their family homes and planting crops and fruit-bearing trees; and (4) that Tomasa did not object when they constructed a chapel on the lot without her permission.

The respondents also submitted a certification issued by the barangay captain declaring that they were the actual occupants of the subject lot and that the lot was free from any claim or conflict.

On 3 October 2005, the MCTC rendered a decision ejecting the respondents and ordering them to pay Tomasa ₱20,000.00 as attorney's fees and ₱3,520.40 as litigation expenses. The MCTC held that she sufficiently established her cause of action while the respondents failed to substantiate their allegation that they had occupied the land for more than 30 years. To wit:

> There is no doubt that the land subject of this case was inherited by the plaintiff from her father Demetrio Jaramillo by virtue of an Extrajudicial settlement of Estate executed among the heirs and that the land is now tax-declared in the name of the plaintiff. While the defendants seemed not to admit during the preliminary conference that plaintiff is the tax declared owner of the property, they, however, did not show any evidence that such tax declaration was fraudulently issued. In fact, they impliedly admitted the fact when they say that the only basis of plaintiff in claiming ownership of the land is the tax declaration but that plaintiff has

> abandoned such claim of ownership when after the lapse of ten (10) years, she did not perfect her title by actually possessing the said property.
>
> As pointed out by the plaintiff, tax declarations are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that [in] is not his actual or constructive possession. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the state and all other interested parties, but also the intention to contribute the needed revenues to the Government. Such an act strengthens one's bonafide claim of acquisition of ownership.
>
> Defendant's right to take possession of the land to claim ownership thereof is not supported by any evidence. All that they alleged is that they have occupied the property for more than 30 years.

The MCTC relied on the **affidavits of the petitioner**[1] and **Elena R. Jaramillo**[2] to support its finding that the respondents' occupation of the property was by mere tolerance of the petitioner.[3] The MCTC also gave credence to a "Promissory Agreement" executed by respondent Roberto Acido before the office of the barangay captain on 21 June 2000. Roberto admitted in the agreement that he was a caretaker of the lot for Tomasa and he would only remain so until the year 2000.[4]

The respondents appealed the MCTC decision to the Regional Trial Court *(RTC)*. The appeal was docketed as **Civil Case No. 2005-591.**

On 14 June 2006, the RTC rendered a decision dismissing the appeal for lack of merit. The RTC found no compelling reason to amend or reverse the findings of the MCTC.

The respondents elevated the case to the CA via petition for review. The petition was docketed as **CA-G.R. SP No. 01135-MIN**.

In its Decision rendered on 16 December 2008, the CA reversed the decisions of the lower courts. The CA did not dispute the MCTC's finding that the petitioner was the owner of the subject lot. However, it held that while the respondents' allegations of occupation were unsupported by evidence, the petitioner failed to establish by competent evidence her allegation of tolerance. The CA deleted the award of damages and dismissed the complaint because the parties' evidence were in equipoise.

The petitioner moved for reconsideration which the CA denied on 26 March 2009.

On 12 May 2009, Tomasa filed this petition for review on *certiorari.*

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1 *CA rollo*, p. 124.
2 Id. at 126.
3 MCTC Decision, *rollo*, pp. 43-59.
4 *Rollo*, pp. 57-58.

THE PETITION

Tomasa argues that the CA erred in dismissing the complaint and in ruling that she had failed to establish her allegations of tolerance by preponderance of evidence. She submits that the case is an exception to the general rule that the factual findings of the CA are conclusive.

In their Comment, the respondents also maintain that the CA erred in not appreciating their documentary evidence to establish their long-term occupation of the subject lot, namely: (1) the Certifications issued by the Barangay Captain of Mauswagon that the respondents are the actual occupants of the property and that the property is free from claim and conflict; [5] (2) the respondents' opposition to Tomasa's free patent application;[6] (3) the affidavits of Romeo Mapiot[7] and Jener Daayta[8] attesting that the respondents are the longtime residents of the subject lot; and (4) their electric bill receipts.

OUR RULING

The factual findings of the Court of Appeals are, as a general rule, conclusive upon this Court. The Supreme Court is not a trier of facts and it is not our function to analyze and weigh the evidence that the lower courts have passed upon. However, jurisprudence has carved out recognized exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (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.[9]

Considering that the factual conclusions of the CA are contrary to those of the MCTC and the RTC, we agree with the petitioner that this case falls under the exceptions to the general rule. We therefore see it appropriate to pass upon the evidence adduced below.

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5 *CA rollo*, pp. 68-75.
6 Id. at 183.
7 Id. at 112.
8 Id. at 114.
9 *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212 (2005), citing *Insular Life Assurance Company, Ltd. v. CA*, G.R. No.126850, 28 April 2004, 428 SCRA 79.

After considering the parties' submissions, we are confronted with the sole issue of whether or not the petitioner established her cause of action by a preponderance of evidence.

Preponderance of evidence simply means evidence that is of greater weight or more convincing than what is offered against it.[10] In determining where the preponderance of evidence lies, the court may consider all the facts and circumstances of the case, such as: the witnesses' demeanor, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and their personal credibility so far as it may legitimately appear to the court.[11]

The petitioner offered the following to prove her allegations of prior possession and tolerance:

1. Survey Report from DENR Region 10 Technical Services showing that the respondents are occupying the subject lot *(Exh. A)*;[12]

2. Certification from the *Lupong Tagapamayapa* that the parties failed to settle the dispute *(Exh. B.);*[13]

3. Demand letters dated 2 August 2004 for the respondents to vacate *(Exh. C to C-9)*;[14]

4. Tax Declaration *(T.D.)* No. 024034 on the subject lot dated 16 October 2001 *(Exh. D)*;[15]

5. T.D. No. 027372 for the year 2005 cancelling T.D. No. 024034 *(Exh. E)*;[16]

6. Certification from the Municipal Assessor that T.D. No. 027372 cancelled T.D. No. 024304;[17]

7. The Deed of Extrajudicial Settlement of the Estate of Demetrio Jaramillo (*Exh. G*),[18]

8. Real Property Historical Ownership of the subject lot certified by the Provincial Assessor (*Exh. H* and *H-1)*,[19]

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10 *Sps. Booc v. Five Star Marketing Co., Inc.*, 563 Phil. 368, 376 (2007), citing *Montañez v. Mendoza*, 441 Phil. 47, 56 (2002).
11 Rule 133, §1 of the Rules of Court.
12 *Rollo*, p. 78.
13 Id. at 79.
14 Id. at 80-89.
15 Id. at 63.
16 Id. at 64.
17 Id. at 65.
18 Id. at 67-72.
19 Id. at 66, 73.

9. Real Property Tax Receipts for 2003, 2004, and 2005 (*Exh. I and I-1*),[20]

10. Certificates of Real Property Tax Payments for 2004 and 2005 *(Exh. J and J-1)*,[21]

11. Certification from the Municipal Assessor dated 12 January 2005 that T.D. No. 024303 is declared in the name of the petitioner *(Exh. K)*;[22]

12. Real Estate Mortgage over the subject lot dated 20 September 2002 executed by the petitioner *(Exh. L)*;[23]

13. Certification from the Office of the Municipal Building Official that the respondents were not granted building permits *(Exh. M)*;[24]

14. Original Certificate of Title issued to a co-heir of the petitioner *(Exh. N)*;[25]

15. The Official receipts of the filing fees *(Exh. O and O-1*);[26]

16. The Promissory Agreement executed by Roberto Acido on 1 June 2000 before the Office of the Barangay Captain (*Exh. P*);[27] and

17. The affidavits of Tomasa J. Sabellina and Elena R. Jaramillo.[28]

On the other hand, the respondents offer the following in support of the claim that they have occupied the subject lot for over thirty years:

1. The joint affidavits of all the respondents;[29]

2. The affidavits of Romeo Mapiot and Jener Daayata;[30]

3. The affidavit of denial of Roberto Acido denying the promissory agreement;[31]

4. Receipts dated August 2005 from their sale of squash planted on the subject lot (Exh. 1 to 1-b);[32]

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20 Id. at 74.
21 Id. at 75.
22 Id. at 76.
23 Id. at 77.
24 *CA rollo*, p. 158.
25 Id. at 159.
26 Id. at 161.
27 *Rollo*, pp. 90-91; *CA rollo*, pp. 162-163.
28 *CA rollo*, pp. 124-126.
29 Id. at 98-100.
30 Id. at 112- 115.
31 Id. at 102.

5. Receipts from the payment of their water utilities dated 31 March 2002, 10 June 2002, and 7 June 2006 *(Annex 1-A to 1-C)*;[33] and

6. A Right-of-Way Easement over the subject lot granted by Laguindingan Mayor Orville J. Abellanosa in favor of Misamis Oriental-1 Rural Electric Service Cooperative, Inc. on 6 September 2004 *(Exh. 10)*.[34]

We have gathered the following facts discussed below based on the evidence outlined above.

The petitioner's father, Demetrio Jaramillo, entered the property in 1948 and declared it in his name under T.D. No. 4343.[35] Demetrio died on 7 November 1953[36] but his heirs continued to declare the property for tax purposes in his name until 1994. On 30 April 1990, the heirs of Demetrio executed a Deed of Extrajudicial Settlement adjudicating the subject lot to Tomasa. Tomasa declared the property in her name under T.D. No. 944316-P in 1997, T.D. 024034 in 2002, and 027372 in 2005. However, at an uncertain point in time prior to the extrajudicial settlement, the respondents entered the property and occupied it under undetermined circumstances.

Like the lower courts, we are convinced that the petitioner is the rightful owner of the subject lot. However, this case is an ejectment proceeding where possession, not ownership, is the central issue.

In ejectment cases, the circumstances of the defendant's entry into the property determines whether the cause of action is for forcible entry or unlawful detainer. In forcible entry, the defendant's possession is unlawful from the beginning because he entered the property through force, intimidation, stealth, threats, or strategy. In unlawful detainer, the defendant's possession is initially lawful because the plaintiff consented to his entry. His possession subsequently becomes unlawful because of the termination of his right to possess the property because of the expiration of a contract or the withdrawal of the plaintiff's consent. Subsequent tolerance will not convert an action from forcible entry into unlawful detainer.[37] The plaintiff must sufficiently establish the character of the defendant's entry into the property through competent evidence.

We agree with the CA that the petitioner failed to discharge this burden.

While the petitioner's tax declarations are good *indicia* of her possession in the concept of an owner, this only refers to possession *de jure*

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32 Id. at 103.
33 Id. at 104-105.
34 Id. at 106
35 Exhibit H.
36 Exhibit G.
37 *Sps. Muñoz v. Court of Appeals*, G.R. No. 102693, 23 September 1992, 214 SCRA 216, 224 citing *Sarona v. Villegas*, G.R. No. L-22984, 27 March 1968, 22 SCRA 1257.

not possession *de facto.* Indisputably, the respondents are in the actual physical possession of the subject lot. The tax declarations do not shed light on the circumstances of the respondents' entry into the property. From the petitioner's evidence, only the affidavits of Tomasa Sabellina and Elena R. Jaramillo, and the promissory agreement from Roberto Acido are instructive as to the nature of the respondents' possession.

The affidavit of Elena R. Jaramillo states:

> That I know for a fact that the possession and occupation by [the respondents] on [the subject lot] were allowed and with the permission and entreaties of the late TEODOSIA JARAMILLO ABELLANOSA, sister of Tomasa J. Sabellina who was then a school teacher at Mauswagon Elementary School, Mauswagon, Laguindingan, Misamis Oriental, and at the same time the administrator of the estate, while the others followed suit with the knowledge and consent of [the petitioner]."

This Court cannot appreciate Elena's declaration in favor of the petitioner. Elena merely states that she knows the facts "as a fact" without explaining how she acquired this information. We cannot determine whether Elena has actual personal knowledge of the facts or learned about them through second-hand information. Thus, her affidavit has very little probative value.

On the other hand, Roberto Acido denies executing the Promissory Agreement which would have been an express recognition of the petitioner's superior rights. However, even if this document was undisputed, it could only affect the rights of Roberto Acido and not the other respondents. Moreover, this document does not shed light as to when and how the respondents entered into possession of the subject lot.

This evidentiary situation only leaves us with the petitioner's affidavit. The affidavit only makes the sweeping statement that the respondents entered the subject lot with her consent and occupied it by mere tolerance.

The petitioner failed to present convincing proof of her allegation of tolerance. There is no competent evidence to support her claim other than her own self-serving affidavit repeating her allegations in the complaint. Allegations are not evidence[38] and without evidence, bare allegations do not prove facts.[39]

On the other hand, the MCTC, the RTC, and the CA unanimously agree that the respondents also failed to substantiate their claim that they have been occupying the subject lot for more than thirty years. We join the lower courts in their finding.

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[38] *Mayor v. Belen,* G.R. No. 151035, 3 June 2004, 430 SCRA 561 and *Marubeni v. Lirag*, 415 Phil. 29, 38 (2001).

[39] *Marubeni, supra* and *Manzano v. Perez, Sr.,* 414 Phil. 728-729, 738 (2001).

The respondents' only relevant evidence to prove their allegations are their joint-affidavit and the affidavits of Romeo Mapiot and Jener Daayata. The receipts from their sale of squash and payment of water utilities, and the right of way easement have no probative value as regards the circumstances of their entry and the length of their occupation over the property.

We seriously doubt the credibility of the affidavits of Mapiot and Daayata. Except for a few modifications in the circumstances of the affiants, the allegations are **exactly** identical. The word-for-word identity of the affidavits cannot help but create suspicion that these are fabricated statements.

We are thus left with only the joint affidavit of the respondents. Again, this joint affidavit merely repeats their self-serving allegations in the answer. Like the petitioner, the respondents presented nothing but bare allegations unsupported by evidence. The parties effectively find themselves in a *"he said, she said"* scenario with regard to when and how the respondents entered the property. However, this is inconsequential considering that the petitioner failed to overcome the burden of evidence in the first place.

When the evidence on an issue of fact is in equipoise or there is doubt as to which side the evidence preponderates, the party having the burden of proof fails upon that issue.[40] Where neither party is able to establish its cause of action and prevail with the evidence it has, the courts have no choice but to leave them as they are and dismiss the complaint/petition.[41]

The petitioner, however, is not left without a remedy in law. She may still avail of the plenary actions of *accion publiciana* or *accion reinvindicatoria* to recover possession and vindicate her ownership over the property.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. No costs.

SO ORDERED.

ARTURO D. BRION
Associate Justice

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40 *Rivera v. Court of Appeals,* G.R. No. 15625, 23 January 1998, 284 SCRA 673.

41 *Rivera, supra* citing *Municipality of Candijay, Bohol v. Court of Appeals,* G.R. No. 116702, 28 December 1995, 251 SCRA 530.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice