

## THIRD DIVISION

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

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

### DECISION

**PANGANIBAN, J.:**

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

#### Statement of the Case

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

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

#### The Facts

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

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

"The plaintiffs' evidence consists of the following:

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

"b) Plaintiff Andrea Tabuso claims to be the owner as successor in interest (granddaughter) of one Andrea Elaba, daughter of Maria Montes

and Borja Elaba, Maria Montes appears to be a sister of Ignacio Montes, in whose name the tax declaration for the property in question was issued for the year 1912 (Exh. A).

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

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

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

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

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

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

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

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

the property, indicating that it was owned by private respondents.

### **Ruling of the Court of Appeals**

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

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

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

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

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

"x x x   x x x                      x x x

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

### **Issues**

In their Memorandum,<sup>[8]</sup> petitioners raise the following issues:

"I

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

"II

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

"III

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

"IV

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

"V

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

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

**The Court's Ruling**

The Petition is devoid of merit.<sup>[10]</sup>

**Main Issue:**  
**Ownership of the Property**

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

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