

**LEONARDO ACABAL AND RAMON NICOLAS, PETITIONERS, VS.
VILLANER ACABAL, EDUARDO ACABAL, SOLOMON ACABAL, GRACE
ACABAL, MELBA ACABAL, EVELYN ACABAL, ARMIN ACABAL,
RAMIL ACABAL, AND B...**

G.R. NO. 148376. March 31, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court is a Petition for Review on Certiorari of the February 15, 2001 Decision[1] of the Court of Appeals reversing that of the Regional Trial Court (RTC) of Dumaguete City, Branch 35.[2]

In dispute is the exact nature of the document[3] which respondent Villaner Acabal (Villaner) executed in favor of his godson-nephew-petitioner Leonardo Acabal (Leonardo) on April 19, 1990.

Villaner's parents, Alejandro Acabal and Felicidad Balasabas, owned a parcel of land situated in Barrio Tanglad, Manjuyod, Negros Oriental, containing an area of 18.15 hectares more or less, described in Tax Declaration No. 15856.[4] By a Deed of Absolute Sale dated July 6, 1971,[5] his parents transferred for P2,000.00 ownership of the said land to him, who was then married to Justiniana Lipajan.[6]

Sometime after the foregoing transfer, it appears that Villaner became a widower.

Subsequently, he executed on April 19, 1990 a deed[7] conveying the same property[8] in favor of Leonardo.

Villaner was later to claim that while the April 19, 1990 document he executed now appears to be a "Deed of Absolute Sale" purportedly witnessed by a Bais City trial court clerk Carmelo Cadalin and his wife Lacorte, what he signed was a document captioned "Lease Contract"[9] (modeled after a July 1976 lease agreement[10] he had previously executed with previous lessee, Maria Luisa Montenegro[11]) wherein he leased for 3 years the property to Leonardo at P1,000.00 per hectare[12] and which was witnessed by two women employees of one Judge Villegas of Bais City.

Villaner thus filed on October 11, 1993 a complaint[13] before the Dumaguete RTC against Leonardo and Ramon Nicolas to whom Leonardo in turn conveyed the property, for annulment of the deeds of sale.

At the witness stand, Villaner declared:

Q: It appears, Mr. Acabal, that you have signed a document of sale with the defendant Leonardo Acabal on April 19, 1990, please tell the court whether you have really agreed to sell this property to the defendant on or before April 19, 1990?

A: We had some agreement but not about the selling of this property.

Q: What was your agreement with the defendant Leonardo Acabal?

A: Our agreement [was] that he will just rent.[14]

x x x

Q: Now, please tell the court how were you able to sign this document on April 19, 1990?

A: I do not know why I signed that, that is why I am puzzled.

Q: Why, did you not read the contents of this document?

A: I have not read that. I only happened to read the title of the Lease Contract.

Q: And do you recall who were the witnesses of the document which you signed in favor of Leonardo Acabal?

A: Employees of Judge Villegas of Bais City.

Q: Did you see them sign that document?

A: Yes, sir.

Q: These signatures appearing in this document marked as Exhibit "C" for the plaintiff and Exhibit "1" for the defendant, please examine over (sic) these signatures if these were the signatures of these witnesses who signed this document?

A: These are not the signatures of the two women.

Q: And after signing this document on April 19, 1990, did you appear before a notary public to have this notarized?

A: No, I went home to San Carlos.[15]

x x x

Q: According to this document, you sell (sic) this property at P10,000.00, did you sell this property to Leonardo Acabal?

A: No, sir.

Q: How about after April 19, 1990, did you receive this amount from Leonardo Acabal?

A: No, sir.[16]

x x x

Q: Now you said that on May 25, 1990, Leonardo Acabal did not pay the amount that he promised to you, what did you do of (sic) his refusal to pay that amount?

A: I went to Mr. [Carmelo] Mellie Cadalin because he was the one who prepared the papers and to ask Leonardo Acabal why he will not comply with our agreement.

Q: By the way, who is this Mellie Cadalin?

A: Mellie Cadalin is also working in the sala of Judge Villegas.

Q: Who requested Mellie Cadalin to prepare this document?

A: Maybe it was Leonardo Acabal.

Q: By the way, when for the first time did you talk to Leonardo Acabal regarding your agreement to lease this property to him?

A: March 14, 1990, in San Carlos.

Q: And what document did you give to him in order that that document will be prepared?

A: I have given (sic) some papers and contract of lease that I have signed to (sic) Mrs. Montenegro.[17] (Emphasis and underscoring supplied)

x x x

Q: Now, Carmelo Cadalin [“Mellie”] also testified before this court that in fact he identified the document marked as Exhibit “C” for the plaintiff that what you executed on April 19, 1990 was a deed of sale and not a contract of lease, what can you say to that statement?

A: That is a lie.

Q: And what’s the truth then?

A: What really (sic) I have signed was the document of lease contract.

Q: Now, can you explain to the Honorable Court why it so happened that on April 19, you were able to sign a deed of sale?

A: What I can see now is that perhaps those copies of the deed of sale were placed by Mr. Cadalin under the documents which I signed the lease contract. But why is it that it has already a deed of sale when what I have signed was only the lease of contract or the contract of lease.

Q: Now, Mr. Cadalin also stated before this court that he handed over to you this Deed of Sale marked as Exhibit “C” and according to him you read this document, what can you say to this statement?

A: Yes, there was a document that he gave me to read it (sic)but it was a contract of lease.

Q: How sure are you that what you signed on April 19, 1990 was really a contract of lease and not a contract of sale?

A: Because when I signed the contract of lease the witnesses that witnessed my signing the document were the employees of Judge Villegas and then I am now surprised why in the deed of sale which I purportedly signed are witnessed by Carmelo Cadalin and his wife Lacorte.[18] (Emphasis and underscoring supplied)

On the other hand, Leonardo asserts that what Villaner executed was a Deed of Absolute Sale for a consideration of P10,000.00 which he had already paid,[19] and as he had become the absolute owner of the property, he validly transferred it to Ramon Nicolas on May 19, 1990.[20]

Carmelo Cadalin who admittedly prepared the deed of absolute sale and who appears as a witness, along with his wife, to the execution of the document corroborated Leonardo’s claim:

Q: Mr. Cadalin, do you know the plaintiff Villaner Acabal?

A: Yes, I know.[21]

x x x

Q: And I would like to ask you Mr. witness why do you know Villaner Acabal?

A: At the time that he went to our house together with Leonardo Acabal he requested me to prepare a deed of sale as regards to a sale of the property.[22]

x x x

Q: And after they requested you to prepare a document of sale, what did you do?

A: At first I refused to [do] it because I have so many works to do, but then they insisted so I prepared the deed.

Q: After you prepared the document, what did you do?

A: After I prepared it I gave it to him so that he could read the same.

Q: When you say “him,” whom do you refer to?

A: Villaner Acabal.

Q: And did Villaner Acabal read the document you prepared?

A: Yes, he read it.

Q: And after reading it what did Villaner Acabal do?

A: He signed the document.

Q: Showing to you a document which is marked Exhibit C for the plaintiff and Exhibit 1 for the defendants, please tell the Honorable Court what relation this document has to the document which you described earlier?

COURT INTERPRETER:

Witness is confronted with the said document earlier marked as Exhibit C for the prosecution and Exhibit 1 for the defense.

A: Yes, this is the one.[23]

x x x

Q: Also stated in the document is the phrase “Signed in the presence of” and there is a number and then two signatures, could you please examine the document and say whether these signatures are familiar to you?

A: Yes, number one is my signature and number 2 is the signature of my wife as witness.[24]

x x x

Q: After Villaner Acabal signed the document, what did Villaner Acabal do?

A: He was given the payment by Leonardo Acabal.[25]

x x x

Q: Aside from the document, deed of absolute sale, that you mentioned earlier that you prepared for Villaner Acabal and Leonardo Acabal, what other documents, if any, did you prepare for them?

A: Affidavit of non-tenancy and aggregate area.[26] (Emphasis and underscoring supplied)

The complaint was later amended[27] to implead Villaner’s eight children as party plaintiffs, they being heirs of his deceased wife.

By Decision of August 8, 1996, the trial court found for the therein defendants-herein petitioners Leonardo and Ramon Nicolas and accordingly dismissed the complaint.

Villaner et al. thereupon brought the case on appeal to the Court of Appeals which reversed the trial court, it

holding that the Deed of Absolute Sale executed by Villaner in favor of Leonardo was simulated and fictitious.”[28]

Hence, Leonardo and Ramon Nicolas’ present petition for review on certiorari,[29] anchored on the following assignments of error:

I.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENT VILLANER ACABAL WAS DECEIVED INTO SIGNING THE DEED OF ABSOLUTE SALE WHEN THE LATTER KNOWINGLY, FREELY AND VOLUNTARILY EXECUTED THE SAME IN FAVOR OF PETITIONER LEONARDO ACABAL.

II.

THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE CONSIDERATION OF THE DEED OF ABSOLUTE SALE IN THE AMOUNT OF TEN THOUSAND PESOS (P10,000.00) WAS “UNUSUALLY LOW AND INADEQUATE,” ESPECIALLY TAKING INTO ACCOUNT THE LOCATION OF THE SUBJECT PROPERTY.

III.

THE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER WHY RESPONDENT VILLANER ACABAL ONLY QUESTIONED THE POSSESSION AND OWNERSHIP OF PETITIONER RAMON NICOLAS IN COURT AFTER THE LATTER WAS IN OPEN, CONTINUOUS AND PEACEFUL POSSESSION OF THE SUBJECT PROPERTY FOR ALMOST THREE (3) YEARS.

IV.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT FAILED TO DECLARE PETITIONER RAMON NICOLAS AS A BUYER IN GOOD FAITH AS THE LATTER TOOK THE NECESSARY STEPS AN ORDINARY AND PRUDENT MAN WOULD HAVE TAKEN BEFORE BUYING THE QUESTIONED PROPERTY.

V.

THE COURT OF APPEALS ERRED IN RULING IN FAVOR OF RESPONDENT VILLANER ACABAL WHEN THE LATTER DID NOT PRESENT A SINGLE WITNESS TO TESTIFY ON THE ALLEGED CONTRACT OF LEASE WHICH HE ALLEGEDLY SIGNED AND WITNESSED BY THE EMPLOYEES OF JUDGE VILLEGAS.

VI.

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT RULED THAT RULE 8, SECTION 8 OF THE 1987 (sic) RULE (sic) OF CIVIL PROCEDURE IS NOT APPLICABLE IN THE CASE AT BAR, CONTRARY TO THE RULING OF THE LOWER COURT.

VII.

THE COURT OF APPEALS ERRED WHEN IT ORDERED PETITIONERS TO PAY RESPONDENTS “JOINTLY AND SEVERALLY BY WAY OF RENTAL THE SUM OF P10,000.00 PER YEAR FROM 1990 UP TO THE TIME THEY VACATE THE PREMISES.”[30]

Procedurally, petitioners contend that the Court of Appeals erred when it failed to apply Section 8, Rule 8 of the Rules of Court, respondent Villaner having failed to deny under oath the genuineness and due execution of the April 19, 1990 Deed of Absolute Sale.

Petitioners’ contention does not persuade. The failure to deny the genuineness and due execution of an actionable document does not preclude a party from arguing against it by evidence of fraud, mistake, compromise, payment,

statute of limitations, estoppel, and want of consideration.[31]

On the merits, this Court rules in petitioners' favor.

It is a basic rule in evidence that the burden of proof lies on the party who makes the allegations[32] – *ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit*.[33] If he claims a right granted by law, he must prove it by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.

More specifically, allegations of a defect in or lack of valid consent to a contract by reason of fraud or undue influence are never presumed but must be established not by mere preponderance of evidence but by clear and convincing evidence.[34] For the circumstances evidencing fraud and misrepresentation are as varied as the people who perpetrate it in each case, assuming different shapes and forms and may be committed in as many different ways.[35]

In the case at bar, it was incumbent on the plaintiff-herein respondent Villaner to prove that he was deceived into executing the Deed of Absolute Sale. Except for his bare allegation that the transaction was one of lease, he failed to adduce evidence in support thereof. His conjecture that “perhaps those copies of the deed of sale were placed by Mr. Cadalin under the documents which I signed the contract of lease,”[36] must fail, for facts not conjectures decide cases.

Attempting to seek corroboration of his account, Villaner presented Atty. Vicente Real who notarized the document. While on direct examination, Atty. Real virtually corroborated Villaner's claim that he did not bring the document to him for notarization,[37] on cross-examination, Atty. Real conceded that it was impossible to remember every person who would ask him to notarize documents:

Q: And in the course of your notarization, can you remember each and every face that come (sic) to you for notarization?

A: No, it is impossible.

Q: In the case of Villaner Acabal which you have his document notarized (sic) in 1990, can you remember his face when he came to you?

A: No.

Q: And can you also say, if a person who came to you having a document to be notarized and if he will appear again after a month, can you remember whether he was the one who came to you?

A: Not so much because everyday there are many people who appear with documents to be notarized, Q: So, it is safe to say that if Villaner Acabal came to you on April 25 or rather April 16, 1990 and have (sic) his document notarized if he comes back in, say May 25, can you still remember if he was the one who came to you?

A: I cannot be sure but at least, there are times I can remember persons because he seems to be close to me already.

Q: Is this Villaner close to you?

A: Because he has been frequenting the house/asking for a copy of the document.

Q: So, he became close to you after you notarized the document?

A: Yes.[38] (Emphasis and underscoring supplied)

On Villaner's claim that two women employees of Judge Villegas signed as witnesses to the deed[39] but that the signatures appearing thereon are not those of said witnesses,[40] the same must be discredited in light of his unexplained failure to present such alleged women employee-witnesses.

In another vein, Villaner zeroes in on the purchase price of the property — P10,000.00 — which to him was unusually low if the transaction were one of sale. To substantiate his claim, Villaner presented Tax Declarations covering the property for the years 1971,[41] 1974,[42] 1977,[43] 1980,[44] 1983,[45] 1985,[46] as well as a Declaration of Real Property executed in 1994.[47]

It bears noting, however, that Villaner failed to present evidence on the fair market value of the property as of April 19, 1990, the date of execution of the disputed deed. Absent any evidence of the fair market value of a land as of the time of its sale, it cannot be concluded that the price at which it was sold was inadequate.[48] Inadequacy of price must be proven because mere speculation or conjecture has no place in our judicial system.[49]

Victor Ragay, who was appointed by the trial court to conduct an ocular inspection[50] of the property and to investigate matters relative to the case,[51] gave an instructive report dated December 3, 1994,[52] the pertinent portions of which are hereby reproduced verbatim:

- a) Only three (3) to four (4) hectares of the eighteen (18) were planted to sugar cane, the rest was never cultivated;
- b) the soil is reddish and somewhat sandy in composition;
- c) the soil contains so much limestones (rocks consisting mainly of calcium carbonate);
- d) no part of the land in question is plain or flat, contrary to claim of the plaintiff that almost 10 hectares of the land in question is plain or flat;
- e) some areas, eastward of and adjacent of the land in question (mistakenly to be owned by the defendant Nicolas) were planted to sugar cane by the owners – Kadusales;
- f) the road going to the land in question (as claimed to be the road) is no longer passable because it has been abandoned and not maintained by anyone, thus it makes everything impossible for anybody to get and haul the sugar cane from the area;
- g) the Commissioner has discovered some stockpiles of abandoned harvested sugar canes left to rot, along the side of the road, undelivered to the milling site because of the difficulty in bringing up trucks to the scene of the harvest;
- h) the sugarcanes presently planted on the land in question at the time of the ocular inspection were three (3) feet in height and their structural built was thin or lean;
- i) Most of the part of the 18 hectares is not planted or cultivated because the same is too rocky and not suitable for planting to sugarcane.[53]

Additionally, Ragay reported that one Anatolio Cabusog recently purchased a 6-hectare property adjoining that of the subject property for only P1,600.00[54] or P266.67 per hectare. Given that, had the 18-hectare subject property been sold at about the same time, it would have fetched the amount of P4,800.00,[55] hence, the P10,000.00 purchase price appearing in the questioned April 19, 1990 document is more than reasonable.

Even, however, on the assumption that the price of P10,000.00 was below the fair market value of the property in 1990, mere inadequacy of the price per se will not rule out the transaction as one of sale. For the price must be grossly inadequate or shocking to the conscience such that the mind revolts at it and such that a reasonable man

would neither directly nor indirectly be likely to consent to it.[56]

Still in another vein, Villaner submits that Leonardo's transfer of the property to Nicolas in a span of one month for a profit of P30,000.00 conclusively reflects Leonardo's fraudulent intent. This submission is a non sequitur.

As for Villaner's argument that the sale of the property to Leonardo and the subsequent sale thereof to Nicolas are void for being violative of the retention limits imposed by Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law, the same fails. The pertinent provisions of said law read:

SECTION 6. Retention Limits. – Except as otherwise provided in this Act, no person may retain, directly or indirectly, any public or agricultural land, the size of which may vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder:[57] Provided further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

x x x

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void: Provided, however, that those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

x x x

SECTION 70. Disposition of Private Agricultural Lands. – The sale or disposition of agricultural lands retained by a land owner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceilings provided for in this Act.

Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof shall be null and void.

Transferees of agricultural lands shall furnish the appropriate Register of Deeds and the BARC an affidavit attesting that his total landholdings as a result of the said acquisition do not exceed the landholding ceiling. The Register of Deeds shall not register the transfer of any agricultural land without the submission of his sworn statement together with proof of service of a copy thereof to the BARC. (Emphasis and underscoring supplied)

As the above-quoted provisions of the Comprehensive Agrarian Reform Law show, only those private lands devoted to or suitable for agriculture are covered by it.[58] As priorly related, Victor Ragay, who was appointed by the trial court to conduct an ocular inspection of the property, observed in his report that only three (3) to four (4) hectares were planted with sugarcane while the rest of the property was not suitable for planting as the soil was full of limestone.[59] He also remarked that the sugarcanes were only 3 feet in height and very lean,[60] whereas sugarcanes usually grow to a height of 3 to 6 meters (about 8 to 20 feet) and have stems 2 to 5 centimeters (1-2 inches) thick.[61]

It is thus gathered that the property was not suitable for agricultural purposes. In any event, since the area devoted to the planting of sugarcane, hence, suitable for agricultural purposes, comprises only 4 hectares at the most, it is less than the maximum retention limit prescribed by law. There was then no violation of the Comprehensive Agrarian Reform Law.

Even assuming that the disposition of the property by Villaner was contrary to law, he would still have no remedy under the law as he and Leonardo were in *pari delicto*, hence, he is not entitled to affirmative relief – one who seeks equity and justice must come to court with clean hands. *In pari delicto potior est conditio defendentis*.^[62]

The proposition is universal that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation. The rule has sometimes been laid down as though it were equally universal, that where the parties are in *pari delicto*, no affirmative relief of any kind will be given to one against the other.^[63] (Emphasis and underscoring supplied)

The principle of *pari delicto* is grounded on two premises: first, that courts should not lend their good offices to mediating disputes among wrongdoers;^[64] and second, that denying judicial relief to an admitted wrongdoer is an effective means of deterring illegality.^[65] This doctrine of ancient vintage is not a principle of justice but one of policy as articulated in 1775 by Lord Mansfield in *Holman v. Johnson*:^[66]

The objection, that a contract is immoral or illegal as between the plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may so say. The principle of public policy is this; *ex dolo malo non oritur actio*.^[67] No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa*,^[68] or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and the defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both are equally in fault *potior est conditio defendentis*.^[69]

Thus, to serve as both a sanction and as a deterrent, the law will not aid either party to an illegal agreement and will leave them where it finds them.

The principle of *pari delicto*, however, is not absolute, admitting an exception under Article 1416 of the Civil Code.

ART. 1416. When the agreement is not illegal per se but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.

Under this article, recovery for what has been paid or delivered pursuant to an inexistent contract is allowed only when the following requisites are met: (1) the contract is not illegal per se but merely prohibited; (2) the prohibition is for the protection of the plaintiffs; and (3) if public policy is enhanced thereby.^[70] The exception is unavailing in the instant case, however, since the prohibition is clearly not for the protection of the plaintiff-landowner but for the beneficiary farmers.^[71]

In fine, Villaner is estopped from assailing and annulling his own deliberate acts.^[72]

More. Villaner cannot feign ignorance of the law, nor claim that he acted in good faith, let alone assert that he is less guilty than Leonardo. Under Article 3 of the Civil Code, “ignorance of the law excuses no one from compliance therewith.”

And now, Villaner’s co-heirs’ claim that as co-owners of the property, the Deed of Absolute Sale executed by Villaner in favor of Leonardo does not bind them as they did not consent to such an undertaking. There is no question that the property is conjugal. Article 160 of the Civil Code[73] provides:

ART. 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.[74]

The presumption, this Court has held, applies to all properties acquired during marriage. For the presumption to be invoked, therefore, the property must be shown to have been acquired during the marriage.[75]

In the case at bar, the property was acquired on July 6, 1971 during Villaner’s marriage with Justiniana Lipajan. It cannot be seriously contended that simply because the tax declarations covering the property was solely in the name of Villaner it is his personal and exclusive property.

In *Bucoy v. Paulino*[76] and *Mendoza v. Reyes*[77] which both apply by analogy, this Court held that registration alone of the properties in the name of the husband does not destroy the conjugal nature of the properties.[78] What is material is the time when the land was acquired by Villaner, and that was during the lawful existence of his marriage to Justiniana.

Since the property was acquired during the existence of the marriage of Villaner and Justiniana, the presumption under Article 160 of the Civil Code is that it is the couple’s conjugal property. The burden is on petitioners then to prove that it is not. This they failed to do.

The property being conjugal, upon the death of Justiniana Lipajan, the conjugal partnership was terminated.[79] With the dissolution of the conjugal partnership, Villaner’s interest in the conjugal partnership became actual and vested with respect to an undivided one-half portion.[80] Justiniana’s rights to the other half, in turn, vested upon her death to her heirs[81] including Villaner who is entitled to the same share as that of each of their eight legitimate children.[82] As a result then of the death of Justiniana, a regime of co-ownership arose between Villaner and his co-heirs in relation to the property.[83]

With respect to Justiniana’s one-half share in the conjugal partnership which her heirs inherited, applying the provisions on the law of succession, her eight children and Villaner each receives one-ninth (1/9) thereof. Having inherited one-ninth (1/9) of his wife’s share in the conjugal partnership or one eighteenth (1/18)[84] of the entire conjugal partnership and is himself already the owner of one half (1/2) or nine-eighteenths (9/18), Villaner’s total interest amounts to ten-eighteenths (10/18) or five-ninths (5/9).

While Villaner owns five-ninths (5/9) of the disputed property, he could not claim title to any definite portion of the community property until its actual partition by agreement or judicial decree. Prior to partition, all that he has is an ideal or abstract quota or proportionate share in the property.[85] Villaner, however, as a co-owner of the property has the right to sell his undivided share thereof. The Civil Code provides so:

ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Thus, every co-owner has absolute ownership of his undivided interest in the co-owned property and is free to alienate, assign or mortgage his interest except as to purely personal rights. While a co-owner has the right to freely sell and dispose of his undivided interest, nevertheless, as a co-owner, he cannot alienate the shares of his other co-owners – *nemo dat qui non habet*.^[86]

Villaner, however, sold the entire property without obtaining the consent of the other co-owners. Following the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so – *quando res non valet ut ago, valeat quantum valere potest*^[87] – the disposition affects only Villaner's share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common.^[88]

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to this grantor in the partition of the thing owned in common. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of substituting the buyers in the enjoyment thereof.

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred., thereby making the buyer a co-owner of the property.

The proper action in cases like this is not for the nullification of the sale or the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the *DIVISION* of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it.^[89]

Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for *PARTITION* under Rule 69 of the Revised Rules of Court. Neither recovery of possession nor restitution can be granted since the defendant buyers are legitimate proprietors and possessors in joint ownership of the common property claimed.^[90] (*Italics in the original; citations omitted; underscoring supplied*)

This Court is not unmindful of its ruling in *Cruz v. Leis*^[91] where it held:

It is conceded that, as a rule, a co-owner such as Gertrudes could only dispose of her share in the property owned in common. Article 493 of the Civil Code provides:

x x x

Unfortunately for private respondents, however, the property was registered in TCT No. 43100 solely in the name of "Gertrudes Isidro, widow." Where a parcel of land, forming part of the undistributed properties of the dissolved conjugal partnership of gains, is sold by a widow to a purchaser who merely relied on the face of the certificate of title thereto, issued solely in the name of the widow, the purchaser acquires a valid title to the land even as against the heirs of the deceased spouse. The rationale for this rule is that "a person dealing with registered land is not required to go behind the register to determine the condition of the property. He is only charged with notice of the burdens on the property which are noted on the face of the register or the certificate of title. To require him to do more is to defeat one of the primary objects of the Torrens system."^[92] (*Citation*

omitted)

Cruz, however, is not applicable for the simple reason that in the case at bar the property in dispute is unregistered. The issue of good faith or bad faith of a buyer is relevant only where the subject of the sale is a registered land but not where the property is an unregistered land.[93] One who purchases an unregistered land does so at his peril.[94] Nicolas' claim of having bought the land in good faith is thus irrelevant.[95]

WHEREFORE, the petition is GRANTED. The Court of Appeals February 15, 2001 Decision in CA-G.R. CV No. 56148 is REVERSED and SET ASIDE and another is rendered declaring the sale in favor of petitioner Leonardo Acabal and the subsequent sale in favor of petitioner Ramon Nicolas valid but only insofar as five-ninths (5/9) of the subject property is concerned.

No pronouncement as to costs.

SO ORDERED. Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Court of Appeals (CA) Rollo at 58-65.

[2] Records Vol. I at 224-227.

[3] Exhibits "C" and "1."

[4] Exhibit "H."

[5] Exhibit "F."

[6] The Deed of Absolute Sale states that at the time the contract was entered into respondent Villaner Acabal was married to Justiniana Lipajan.

[7] Exhibits "C" and "1." The document states that at the time the contract was entered into respondent Villaner Acabal was a widower.

[8] The Deed of Absolute Sale states that the property is described by Tax Declaration No. 16878 (Exhibit "I") and has an area of 186,000 square meters more or less. In contrast, the Deed of Absolute Sale between Villaner Acabal and his parents states that the property has an area of 18.15 hectares. 1 hectare is equal to 10,000 square meters.

[9] Transcript of Stenographic Notes (TSN), March 16, 1994 at 17.

[10] Exhibit "Q." It should be noted that the lease agreement was not signed by Maria Luisa Montenegro. The lease agreement was also not signed by any witness nor is it notarized. Only the signature of Villaner Acabal appears on the document.

[11] TSN, March 16, 1994 at 22-23.

[12] Id. at 16.

[13] Records Vol. I at 1-3.

[14] TSN, March 16, 1994 at 16.

[15] Id. at 17-18.

[16] Id. at 18.

[17] Id. at 22-23.

[18] TSN, November 23, 1994 at 4-5.

[19] The document states that Villaner Acabel acknowledges receipt of the consideration of P10,000.00.

[20] Exhibits “D” and “3.”

[21] TSN, July 18, 1994 at 4.

[22] Id. at 5.

[23] Id. at 5-6.

[24] Id. at 7.

[25] Id. at 7-8.

[26] Id. at 8.

[27] Records at 204-205.

[28] CA Rollo at 103.

[29] Rollo at 25-54.

[30] Id. at 32-33.

[31] Republic v. Court of Appeals, 296 SCRA 171, 181-182 (1998); Bough and Bough v. Cantiveros and Hanopol, 40 Phil. 209, 213-214 (1919); Hibberd v. Rohde and McMillian, 32 Phil. 476, 480 (1915).

[32] Citibank, N.A. Mastercard v. Teodoro, 411 SCRA 577, 583 (2003); Manongsong v. Estimo, 404 SCRA 683, 693 (2003); Noceda v. Court of Appeals, 313 SCRA 504, 520 (1999); Pimentel v. Court of Appeals, 307 SCRA 38, 46 (1999); Luxuria Homes, Inc. v. Court of Appeals, 302 SCRA 315, 325 (1999); Pacific Banking Corporation Employees Organization v. Court of Appeals, 288 SCRA 197, 206 (1998); Jison v. Court of Appeals, 286 SCRA 495, 532 (1998); P.T. Cerna Corporation v. Court of Appeals, 221 SCRA 19, 25 (1993).

[33] The proof lies upon him who affirms, not upon him who denies; since by the nature of things, he who denies a fact cannot produce any proof. (Black’s Law Dictionary 516 [1991], 6th ed.)

[34] Heirs of William Sevilla v. Sevilla, 402 SCRA 501, 511 (2003); Cenido v. Apacionado, 318 SCRA 688, 702 (1999); Palmares v. Court of Appeals, 288 SCRA 422, 434 (1998); Inciong, Jr. v. Court of Appeals, 257 SCRA 578, 586 (1996); Samson v. Court of Appeals, 238 SCRA 397, 408 (1994); Cu v. Court of Appeals, 195 SCRA 647, 657 (1991); Carenan v. Court of Appeals, 173 SCRA 711, 715 (1989).

[35] Spouses Morandarte v. Court of Appeals, G.R. No. 123586, August 12, 2004.

[36] TSN, November 23, 1994 at 4.

[37] TSN, April 26, 1994 at 11.

[38] Id. at 13-14.

[39] TSN, March 16, 1994 at 17-18.

[40] Ibid.

[41] Tax Declaration No. 15856, Exhibit “H.”

- [42] Tax Declaration No. 16878, Exhibit “I.”
- [43] Tax Declaration No. 10237, Exhibit “J.”
- [44] Tax Declaration No. 29-63, Exhibit “K.”
- [45] Tax Declaration No. 27-107, Exhibit “L.”
- [46] Tax Declaration No. 27-185, Exhibit “M,” and Tax Declaration No. 27-184, Exhibit “N.”
- [47] Declaration of Real Property No. 12-027-0136, Exhibit “O.”
- [48] *San Pedro v. Lee*, G.R. No. 156522, May 28, 2004; *Fernandez v. Tarun*, 391 SCRA 653, 662 (2002);
- [49] *Ng Cho Cio v. Ng Diong*, 1 SCRA 275, 282 (1961).
- [50] Records Vol. I at 129.
- [51] *Id.* at 134.
- [52] *Id.* at 145-153.
- [53] *Id.* at 150-151.
- [54] *Id.* at 152.
- [55] P266.67 per hectare x 18 hectares = 4,800.06 .
- [56] *San Pedro v. Lee*, *supra*; *Fernandez v. Tarun*, *supra*; *Cachola, Sr. v. Court of Appeals*, 208 SCRA 496, 501 (1992).
- [57] Presidential Decree No. 27 allows for a maximum retention area of not more than seven (7) hectares.
- [58] Rep. Act No. 6657 (1988), sec. 4.
- [59] Records Vol. I at 150-151.
- [60] *Id.* at 151.
- [61] http://encarta.msn.com/encyclopedia_761573379/Sugarcane.html.
- [62] In case of equal or mutual fault [between two parties] the condition of the party defending is the better one. Where each party is equally in fault, the law favors him who is actually in possession. Where the fault is mutual, the law will leave the case as it finds it. (Black’s Law Dictionary 791 [1991], 6th ed.)
- [63] *Silagan v. Intermediate Appellate Court*, 196 SCRA 774, 785 (1991).
- [64] *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306 (1985).
- [65] *Id.* In *McMullen v. Hoffman*, 174 U.S. 639, 669-670 (1899), the U.S. Supreme Court said:
- To refuse to grant either party to an illegal contract judicial aid for the enforcement of his alleged rights under it tends strongly towards reducing the number of such transactions to a minimum. The more plainly parties understand that when they enter into contracts of this nature they place themselves outside the protection of the law, so far as that protection consists in aiding them to enforce such contracts, the less inclined will they be to enter into them. In that way the public secures the benefit of a rigid adherence to the law.
- [66] 1 Cowp. 341 (1775).

[67] Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. (Black's Law Dictionary 567 [1991], 6th ed.)

[68] Out of a base [illegal, or immoral] consideration. (Black's Law Dictionary 589 [1991], 6th ed.)

[69] 1 Cowp. 341, 343 (1775).

[70] Philippine National Bank v. De los Reyes, 179 SCRA 619, 628 (1989); Guiang v. Kintanar, 106 SCRA 49, 92 (1981).

[71] An example of a prohibition beneficial to a plaintiff is the prohibition in the Public Land Act which prohibits the alienation of homesteads granted by the State within the 5 year prohibitive period. The primordial aim of this prohibition is to preserve and keep in the family of the homesteader the piece of land that the State had gratuitously given. Thus, in Santos v. Roman Catholic Church of Midsayap, et al. (94 Phil. 405, 411 [1954]) this Court held:

The case under consideration comes within the exception above adverted to. Here appellee desires to nullify a transaction which was done in violation of the law. Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality, but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated. This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve." We are, therefore, constrained to hold that appellee can maintain the present action it being in furtherance of this fundamental aim of our homestead law. (Citations omitted)

[72] San Agustin v. Court of Appeals, 371 SCRA 348, 359 (2001); Sarmiento v. Salud, 45 SCRA 213, 216 (1972).

[73] The governing law in this case is Article 160 of the Civil Code since the marriage between Villaner Acabal and Justiniana Lipajan and Lipajan's death was before August 3, 1988 – the effectivity of the Family Code. Incidentally, Art. 119 of the Civil Code provides:

ART. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Thus, before the effectivity of the Family Code, in the absence of evidence to the contrary, there is a presumption that the property relations of the husband and wife are under the regime of conjugal partnership of gains.

[74] Article 116 of the Family Code states: All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.

[75] Torela v. Torela, 93 SCRA 391, 396 (1979); Ponce de Leon v. Rehabilitation Finance Corporation, 36 SCRA 289, 310 (1970); Cobb-Perez v. Lantin, 23 SCRA 637, 644-645 (1968); Maramba v. Lozano, 20 SCRA 474, 478 (1967).

[76] 23 SCRA 248 (1968).

[77] 124 SCRA 154 (1983)

[78] Id. at 165; 23 SCRA 248, 257 (1968).

[79] Civil Code, art. 175 (1).

[80] Civil Code, art. 185.

[81] Civil Code, art. 777.

[82] Civil Code, art. 996.

[83] Carvajal v. Court of Appeals, 112 SCRA 237, 239 (1982); Pamplona v. Moreto, 96 SCRA 775, 781 (1980); Taningco v. Register of Deeds of Laguna, 5 SCRA 381, 382-383 (1962).

[84] $1/2 \times 1/9 = 1/18$, one-half representing Justiniana's share in the conjugal partnership and one-ninths representing each heir's share in Justiniana's said half. This was done in order to get each heir's share with respect to the entire conjugal partnership.

[85] City of Mandaluyong v. Aguilar, 350 SCRA 487, 499 (2001); Oliveras v. Lopez, 168 SCRA 431, 437 (1988); Carvajal v. Court of Appeals, supra at 240; Diversified Credit Corporation v. Rosado, 26 SCRA 470, 474 (1968).

[86] He who hath not cannot give. (Black's Law Dictionary 1037 [1991], 6th ed.)

[87] When a thing is of no effect as I do it, it shall have effect as far as [or in whatever way] it can. (Black's Law Dictionary 1243 [1991], 6th ed.)

[88] Aguirre v. Court of Appeals, 421 SCRA 310, 323-324 (2004); Corinthian Realty, Inc. v. Court of Appeals, 394 SCRA 260, 268 (2002); Tomas Claudio Memorial College, Inc. v. Court of Appeals, 316 SCRA 502, 509 (1999); Paulmitan v. Court of Appeals, 215 SCRA 866, 872-873 (1992); Bailon-Casilao v. Court of Appeals, 160 SCRA 738, 745 (1988).

[89] En passant, co-owners instead of filing a case for partition may resort to legal redemption under Article 1623 of the Civil Code. Article 1623 provides:

ART. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

Under Article 1623, when a vendor sells real property, he must notify in writing his co-owners who may redeem the same within thirty (30) days from notice. The general rule is that written notice of the sale to all possible redemptioners is indispensable. The 30 day period which is a condition precedent to the exercise of the right of legal redemption is counted from the written notice. However, in *Alonzo v. Intermediate Appellate Court* (150 SCRA 259), this Court held that as an exception to the general rule the co-heirs who lived with the vendors in the same lot are deemed to have received actual notice of the sale. *Alonzo* is applicable in this case since the co-heirs are deemed to have received actual notice of the sale since they live in the same house as the vendor. Hence, they may no longer exercise their right of redemption.

[90] *Bailon-Casilao v. Court of Appeals*, supra.

[91] 327 SCRA 570 (2000).

[92] Id. at 577-578.

[93] Sales v. Court of Appeals, 211 SCRA 858, 865-866 (1992).

[94] Aguirre v. Court of Appeals, supra at 321-322.

[95] David v. Bandin, 149 SCRA 140, 150 (1987).

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