Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NICOMEDES AUGUSTO, GOMERCINDO JIMENEZ, MARCELINO PAQUIBOT, and ROBERTA SILAWAN, Petitioners,	**G.R. No. 218731**
	Present:
	CARPIO, *J., Chairperson,* PERLAS-BERNABE, JARDELEZA,* CAGUIOA, and REYES, J. JR., *JJ.*
- versus -	
ANTONIO CARLOTA DY and MARIO DY, Respondents.	**Promulgated:** 13 FEB 2019

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DECISION

REYES, J. JR., *J.*:

The Facts

Subject of the present controversy is a parcel of land designated as Lot No. 4277, consisting of 5,327[1] square meters (sq m), located in Lapu-Lapu City, originally registered in the name of spouses Sixto Silawan and Marcosa Igoy (Sixto and Marcosa) under Original Certificate of Title (OCT) No. RO-3456.[2] The spouses Sixto and Marcosa had only one child, petitioner Roberta Silawan (Roberta).

* Designated additional member per Special Order No. 2630-I dated January 29, 2019 in lieu of Associate Justice Ramon Paul L. Hernando who participated in the deliberation in the Court of Appeals.

1 Sometimes referred as 5,237 sq m in some parts of the *rollo.*

2 *Rollo*, pp. 62-67.

On July 16, 2002, respondent Antonio Carlota Dy (Antonio) filed a Complaint for Declaration of Nullity of Deeds, Titles, Tax Declaration with Partition and/or Recovery of Shares, Attorney's Fees, Damages and Costs against petitioners Nicomedes Augusto (Nicomedes), Gomercindo Jimenez (Gomercindo), Marcelino Paquibot (Marcelino), Roberta (collectively, the petitioners) and the Register of Deeds of Lapu-Lapu City. He claimed to own a portion of Lot No. 4277 pursuant to a purchase he made on November 25, 1989. Allegedly, his acquisition of the said property can be traced as follows:

1) On March 31, 1965, Sixto sold Lot No. 4277 with an area of 5,327 sq m to Severino Silawan (Severino), married to Cornelia Gungob;

2) On May 7, 1965, Severino sold one-half portion of the property, or 2,663.5 sq m to Isnani Maut (Isnani) and Lily Silawan (Lily);

3) On September 16, 1966, Isnani and Lily sold the 2,663.5 sq m which they acquired to Filomeno Augusto (Filomeno) and Lourdes Igot (Lourdes);

4) On November 25, 1989, Filomeno and Lourdes sold the 2,363-sq m portion of which they acquired to Antonio and disposed the remaining 300 sq m to Nicomedes Augusto (Nicomedes) and Gaudencia Augusto (Gaudencia).

While initiating the paperworks to secure a certificate of title in his name sometime in January 2002, he discovered that Transfer Certificates of Title (TCTs)[3] over Lot No. 4277 were already issued in petitioners' names, as follows:

Lot No.	TCT No.	Registered Owner	Area
Lot No. 4277-A	48562	Sps. Nicomedes Augusto & Gaudencia Augusto	300 sq m
Lot No. 4277-B	48563	Gomercindo Jimenez married to Estela Jimenez	1,331 sq m
Lot No. 4277-C	48564	Marcelino Paquibot married to Elena Paquibot	1,332.50 sq m
Lot No. 4277-D	48565	Roberta Silawan, widow	2,363.50 sq m

[3] Id. at 8.

The aforesaid TCTs replaced OCT No. RO-3456. It appears that the issuance of the said TCTs were effected by virtue of a document entitled "Extrajudicial Settlement By Sole and Only Heir with Confirmation of the Deed of Absolute Sale[s]"[4] executed by Sixto and Marcosa's only heir, Roberta, on June 27, 2001 and which was annotated in OCT No. RO-3456 on December 14, 2001.[5] In the said document, Roberta declared that she was the only heir of Sixto and Marcosa who died on December 29, 1968 and October 5, 1931, respectively. She adjudicated unto herself the ownership of the entire Lot No. 4277 and confirmed the disposition and subsequent transfers made by her father, Sixto, to quote:

> Deed of Sale per [D]oc. [N]o. 130 in favor of Severino Silawan m/t Cornelia Gungob; Deed of Sale [D]oc. [N]o. 343 in favor of Mariano Silawan and Consorcia Ocomen; Deed of Sale [D]oc. [N]o. 46 in favor of Marcelino Paquibot[,] married; Deed of Sale [D]oc. [N]o. 113 in favor of Sps. Nicolas Aying and Maura Augusto; Deed of Sale [D]oc. [No.] 486 in favor of Gomercindo [Jimenez], married; Deed of Sale [D]oc. [N]o. 288 in favor of Nicomedes Augusto and Gaudencia Augusto, of the parcel of land herein described subject to all terms and conditions, set forth [in] the document on file acknowledged before Notary Public Alfredo S. Pancho as per [D]oc. [N]o. 141; [P]age [N]o. 28; [B]ook [N]o. 1; [S]eries of 2001.[6]

The mentioned Deeds of Absolute Sale were all annotated in the OCT No. RO-3456 on December 14, 2001.[7]

Also annotated in the same OCT were: (a) the aforesaid Deeds of Sale as mentioned by Roberta in her Extrajudicial Settlement; (b) the Letter-Request[8] made by petitioners requesting the Register of Deeds to cancel OCT No. RO-3456 and in lieu thereof, to issue certificates of title in their names for the portions which they acquired; and (c) the Deed of Partition[9] executed by petitioners. Incidentally, the Register of Deeds favorably acted on petitioners' letter-request and issued TCTs in their respective names on December 14, 2001.

Antonio asserted that Roberta's act of executing the Extrajudicial Settlement, which apparently paved the way for the succeeding sales to the other petitioners, had no basis because when she executed said document, the property was already previously sold by the spouses Sixto and Marcosa to Antonio's predecessor-in-interest. He, thus, prayed for the nullity of the said Deed of Extrajudicial Settlement together with the resulting titles

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4 Id. at 60-61.
5 Id. at 63.
6 Id.
7 Id. at 64-66
8 Supra note 5.
9 *Rollo*, p. 66.

arising from such documents and for repartition of the property in order for the area corresponding to what he bought be delivered to him.

On September 6, 2002, Roberta filed her Answer. The other petitioners also filed their Answer.

Meanwhile, respondent Mario Dy (Mario) filed a Motion for Intervention. Mario also claimed ownership of the portion of Lot No. 4277 which allegedly can be traced as follows:

1) On March 31, 1965, Sixto sold the entire 5,327 sq m of Lot No. 4277 to Severino;

2) On September 15, 1965, Severino sold half of the portion (2,663.5 sq m) of Lot No. 4277 to Mariano Silawan (Mariano) married to Consorcia Ocomen (Consorcia);

3) On May 12, 1990, Mariano and Consorcia sold a portion of their acquisition specifically 1,332.5 sq m to Rodulfo Augusto (Rodulfo) and Gloria Pinote (Gloria);

4) On May 23, 1994, Rodulfo and Gloria sold such portion to him (Mario).

At the pre-trial, petitioners and their counsel did not appear. Thus, the RTC declared them in default and allowed Antonio to present evidence *ex parte*. Petitioners' counsel moved to lift the order of default citing as reason that his 2009 calendar was lost. Unfortunately, the motion was denied in an Order dated September 14, 2010.

The Decision of the RTC

On November 9, 2012, the RTC rendered a Decision[10] granting the complaint and ordered the new partition of the property. The RTC declared as null and void the following: (a) the Extrajudicial Settlement by Sole and Only Heir with confirmation of the Deed of Absolute Sale executed by Roberta; (b) the Affidavit of Loss executed by Marcelino; (c) the Letter-Request of the petitioners to cancel OCT No. RO-3456; (d) the Deed of Partition executed by the petitioners; and (e) the Deed of Sale between spouses Mariano and Consorcia in favor of Marcelino. Consequently, the RTC also ordered the cancellation of all the TCTs issued in favor of the petitioners.

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[10] Id. at 32-33.

In so ruling, the RTC reasoned out that the sale in favor of Nicomedes cannot be traced back to the original owner (Sixto). From among the series of transfers of the property from Sixto all the way to Nicomedes, the RTC found an irregularity in the sale in favor of Marcelino. At that point, it was alleged that the tracing cloth of the approved subdivision plan for Lot No. 4277 was lost. But the fact is, said tracing cloth was all along in possession of Antonio. The RTC then doubted how Marcelino was able to obtain the 1,332-sq m lot in 1997 when the same had been sold to a certain Rodulfo and Gloria. Marcelino cannot, therefore, be considered as buyer in good faith and for value because of his prior knowledge of the existence of a previous purchaser who had the tracing cloth.

Thus, the RTC ordered a new partition of Lot No. 4277 as follows:

1. To spouses Antonio and Jean Dy – 2,363.50 sq m, more or less;
2. To spouses Mario and Luisa Dy – 1,332.50 sq m, more or less;
3. To spouses Gomercindo and Estela Jimenez – 1,331 sq m, more or less; and
4. To spouses Nicomedes Augusto and Gaudencia Augusto – 300 sq m, more or less.

Dissatisfied with the RTC Decision, the petitioners filed an appeal with the CA.

Ruling of the CA

In the assailed Decision[11] dated November 20, 2014, the Court of Appeals-Cebu City (CA) in CA-G.R. CEB C.V. No. 04753 affirmed *in toto* the findings of the RTC.

The CA, in sustaining the RTC, held that Roberta cannot unilaterally rescind the sale executed by her father. The sale was made way back in 1965 and it can be safely presumed that proprietary rights had already been acquired by the buyers in interim. Moreover, she failed to bring the proper action in court to defend her claims. At the time the subject property was offered to the buyers, there was yet no annotation that would place them on guard that what was being sold to them was infirmed. The CA opined that since the Extrajudicial Settlement executed by Roberta cannot be given probative value, all accompanying documents executed pursuant to it should also be nullified since these were executed fraudulently.

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11 Penned by then Court of Appeals Associate Justice Ramon Paul L. Hernando (now a Member of the Court), with Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob; *rollo* pp. 28-39.

Petitioners filed a Motion for Reconsideration.[12] The motion was denied by the CA in a Resolution[13] dated June 2, 2015. Undaunted, petitioners filed the instant petition with this Court arguing as follows:

> 1. THE DECISION OF THE [CA] FAILED TO SPECIFICALLY ADDRESS THE ISSUE REGARDING THE PROPRIETY OF THE TRIAL COURT'S REFUSAL TO LIFT ORDER OF DEFAULT AGAINST PETITIONERS;
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> 2. THE DECISION OF THE [CA] FAILED TO CONSIDER THAT ALTHOUGH PETITIONERS WERE UNABLE TO PRESENT EVIDENCE DUE TO THE ORDER OF DEFAULT AGAINST THEM, RESPONDENTS' VERY OWN EVIDENCE, SPECIFICALLY EXHIBT "B" (OCT.) NO. 3456, SHOWED THAT PETITIONERS' TRANSACTIONS WERE MADE EARLIER THAN THAT OF THE RESPONDENTS AND WERE ALSO DULY REGISTERED AND ANNOTATED ON THE SAID OCT;
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> 3. THE DECISION OF THE [CA] FAILED TO CONSIDER THAT PETITIONERS WERE THE FIRST REGISTRANTS OF THE PROPERTY SOLD TWICE BY SIXTO SILAWAN;
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> 4. THE DECISION OF THE [CA] FAILED TO CONSIDER THAT PETITIONERS WERE BUYERS IN GOOD FAITH AND THAT THE TRIAL COURT CANNOT JUST SUMMARILY DECLARE PETITIONERS' TRANSACTIONS AS FRAUDULENT; [and]
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> 5. THE DECISION OF THE [CA] FAILED TO ADDRESS THE ISSUE ON THE IMPROPRIETY OF GRANTING RELIEF TO RESPONDENT MARIO DY AND FURTHER ERRED IN SUSTAINING THE PARTITION ORDERED BY THE TRIAL COURT.[14]

From the above arguments, two main issues need to be threshed out: (1) the propriety of declaring petitioners in default and allowing respondents to present evidence *ex parte*; and (2) the propriety of cancelling petitioners' TCTs.

I.

We cannot fault the RTC for allowing the respondents to present their evidence *ex parte* in view of the failure of petitioners to attend the pre-trial conference as it merely adhered to the Rules. Thus, Rule 18, Section 5 of the 1997 Rules of Court:

> Section 5. *Effect of failure to appear.* — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be

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12 Id. at 44-53.
13 Id. at 42-43.
14 Id. at 12-13.

> cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The aforesaid rule explicitly provides that both parties (and their counsel) are mandated to appear at a pre-trial except for: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[15]

In the present case, petitioners failed to attend the pre-trial conference. They did not even give any excuse for their non-appearance. It was only during the appeal in the RTC that petitioners explained that their non-attendance was due to the fact that their counsel lost his calendar. At any rate, this still cannot be considered a justifiable excuse for their non-attendance as it bespeaks of carelessness and indifference to the importance of pre-trial to explore possible ways to avoid a protracted trial. Thus, the RTC properly issued an Order allowing respondents to present evidence *ex parte*.

As it now stands, the RTC could only render judgment based on the evidence offered by respondents during the trial.[16] The petitioners lost their right to present their evidence during the trial and, *a fortiori*, on appeal due to their inattentiveness and disregard of the mandatory attendance in the pre-trial conference.[17] As held by this Court:

> The pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. More significantly, the pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it paved the way for a less cluttered trial and resolution of the case. It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating and expediting trial.[18]

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15 *Benavidez v. Salvador,* 723 Phil. 332, 350-351 (2013).

16 *Spouses Salvador v. Spouses Rabaja,* 753 Phil. 175, 192 (2015).

17 *Aguilar v. Lightbringers Credit Cooperative,* 750 Phil. 195, 210 (2015).

18 Id. at 209.

II.

In reviewing the merits of the case, this Court, just like the RTC and the CA, shall only consider evidence which were presented *ex parte* by respondents during the trial, consisting of OCT No. RO-3456 and the annotations thereof, and the Deeds of Absolute Sale, as appreciated by the CA. These pieces of evidence, if juxtaposed together would show the transfers and dispositions of the subject property from the original registered owner to the subsequent purchasers. To illustrate:

> In March 1965, Sixto Silawan sold the entire property involving 5,327 sq m to Severino.[19] The Annotation in OCT No. RO-3456 indicated, however, that the sale transaction was March 30, 1959.[20]

Severino, in turn, sold his purchased property to two persons. Such that on May 7, 1964, Severino sold half of the undivided portion (2,663.5 sq m) to Isnani and Lily.[21] On September 15, 1965, Severino sold the remaining half (2,663.5 sq m) to Mariano (the document of sale had a notation that half of the property was sold to another person).[22]

From Isnani and Lily, the property which they purchased (involving 2,663.5 sq m) was thereafter sold to spouses Filomeno and Lourdes on September 16, 1966.[23] On November 25, 1989, spouses Filomeno and Lourdes sold the 2,363.5 sq m of their purchased property to Antonio.[24] The remaining portion of 300 sq m was, in turn, sold to Nicomedes and Gaudencia in October 1989.[25]

Mariano, on the other hand, disposed of his purchased property (2,663.5 sq m) as follows:

a) On July 18, 1968, Mariano sold 1,332.5 sq m of his purchased property to Nicolas[26] and Maura, who, in turn, sold their purchased property to Gomercindo,[27] who had been issued a TCT as of 2001. It bears to stress that we cannot just disregard OCT No. RO-3456 and the annotations thereof. Apart from the fact that this title was mentioned by respondent Antonio in his Complaint *a quo* as Exhibit "B,"[28] the said document is

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19 CA Decision, *rollo*, p. 36.
20 *See rollo*, p. 64.
21 Supra note 19.
22 Id.
23 Id. at 37.
24 Id.
25 Id. at 37 and 66.
26 *See* Annotation in OCT No. RO-3456, *rollo*, p. 65.
27 Id.
28 Id. at 47.

likewise the mother title from which the disputed properties came from. Hence, the same must be considered.

b) On July 14, 1987, Mariano sold 1,332.5 sq m of the property to Marcelino[29] who had been issued a TCT as of 2001.

c) In May 1990, Mariano sold again the 1,332.5 sq m to Rodulfo[30] who, in turn, sold his purchased property to respondent Mario and Luisa Dy (Luisa), on May 23, 1994.[31]

However, a closer perusal of the foregoing transfers and dispositions would show an invalid conveyance made by the original owner, Sixto, as to his undivided share of the subject property.

The subject property is originally conjugal in nature

It must be stated at the outset that the disputed property, with an area of 5,327 sq m and covered by OCT No. RO-3456, is conjugal in nature being registered under the names of spouses Sixto and Marcosa. Since Sixto and Marcosa were married prior to the effectivity of the Family Code and no marriage settlement was provided, their property relations were governed by the conjugal partnership of gains as provided under Article 119 of the Civil Code.[32] Thus, upon the death of Marcosa on October 5, 1931, the conjugal nature of the property was dissolved and the interest of Sixto (surviving spouse), with respect to his undivided one-half share on the conjugal property goes to and becomes vested on him.[33]

In other words, by virtue of such dissolution, one-half of the property should pertain to Sixto as his share from the conjugal estate plus another one-fourth representing his share as surviving spouse of Marcosa.[34] Roberta, as the sole legitimate child of the spouses is entitled to the other one-fourth of the property.[35] This equal sharing between the surviving

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29 Id. at 66.
30 Supra note 23.
31 Id.
32 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.
33 *Taningco v. Register of Deeds of Laguna*, 115 Phil. 374, 376 (1962).
34 *Olegario v. Court of Appeals*, 308 Phil. 98, 103-104 (1994).
35 Id. at 104.

spouse and the legitimate child to the deceased's estate is in accordance with Article 996[36] of the Civil Code as clarified by this Court in the case of *In Re: Santillon v. Miranda.*[37]

Upon the death of Marcosa, co-ownership was formed between Sixto and Roberta over the subject property

After the death of Marcosa (one of the registered owners), the subject property became co-owned by Sixto and Roberta.[38] In other words, before actual partition, co-ownership between Sixto and Roberta was formed over the subject property. Thus, each co-owner of property which is held *pro indiviso* exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners.[39] Thus:

> This Court has ruled in many cases 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 the sale or other disposition of a co-owner affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common.[40]

Sale between Sixto and Severino is valid up to Sixto's rightful undivided share in the subject property

Hence, the sale transaction between Sixto and Severino could be legally recognized only with respect to the former's *pro indiviso* share in the co-ownership.[41] Clearly then, at the time of sale by Sixto in favor of Severino, the former could only dispose of his three-fourths undivided share of the entire property. The remaining one-fourth belonging to Roberta has yet to be partitioned. Hence, the sale executed by Sixto in favor of Severino in 1965 is valid up to three-fourths undivided portion of the property, which is 3,995.25 sq m and void as to the remaining one-fourth or 1,331.75 sq m,

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36 Art. 996. If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children.

37 121 Phil.1351, 1355 (1965).

38 Art. 1078 of the Civil Code provides, "Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased."

39 *Alejandrino v. Court of Appeals,* 356 Phil. 851, 863 (1998).

40 *Torres, Jr. v. Lapinid,* 748 Phil. 587, 597 (2014).

41 *Heirs of the late Spouses Balite v. Lim,* 487 Phil. 281, 296 (2004).

which pertains to Roberta's undivided share. This is consistent with the rule that one cannot sell what he does not own.[42]

Severino's sale of one-half of the subject property to Isnani and Lily is valid

Consistent with the said principle, it is logical then that all the subsequent sales and conveyances made by Severino would only be valid up to the portion that he owns.

Since Severino purchased the three-fourths undivided share of Sixto to the property, then this is the extent of the area of the property (consisting of 3,995.25 sq m) which he could validly dispose and sell. Hence, the sale by Severino to Isnani and Lily on May 7, 1964 involving the 2,663.5 sq m is valid as the area sold wholly covers what Severino purchased from Sixto.

Severino's sale of another one-half of the subject property to Mariano is void

However, the subsequent sale by Severino to Mariano on September 15, 1965 can be given effect only to the extent of 1,331.75 sq m – the remaining undivided portion of Severino's interest in the property that was not sold to Isnani. Thus, as between Isnani and Mariano, the former who is first in time (as the first vendee) is preferred in right. *Prior tempore, potior jure.*[43] This is true since there was no allegation whatsoever of who between them first possessed and who first registered the sale in good faith.

All subsequent sales made by spouses Isnani and Lily are valid

At this point, we see no problem with the dispositions made by spouses Isnani and Lily. Being the co-owner of 2,663.5 sq m undivided portion of the subject land, their sale to Filomeno of the said portion of the property is valid. In turn, Filomeno's subsequent sale to Antonio, involving 2,363.5 sq m of the property on November 25, 1989 and the sale to Nicomedes involving 300 sq m of the property in October 1989 were all valid and can be recognized as the areas sold were covered by the area of the property which Filomeno owned.

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42 *Gacos v. Court of Appeals*, 287 Phil. 9, 22 (1992).

43 *Cuizon v. Remoto*, 509 Phil. 258, 267 (2005).

Mariano's sale of the undivided portion of his purchased property is partly infirmed

The problem now is the sale transactions made by Mariano to three persons. Since Mariano had validly purchased from Severino 1,331.75 sq m of the property, it follows then that the sale transaction between him (Mariano) and Nicolas on June 18, 1968 is valid up to the said aliquot share, which is 1,331.75 sq m. This is the only area which he could validly dispose. Equally valid is the subsequent sale made by Nicolas to Gomercindo up to the said undivided portion which is 1,331.75 sq m.

Since there was nothing more from the undivided portion that was left to Mariano, his subsequent sale to Marcelino on July 14, 1987 and to Rodulfo in May 1990 of the portion of the property cannot be given effect. As discussed, the property was already sold by Mariano in favor of Nicolas in 1968, who, in turn, sold the same to Gomercindo on February 16, 1978. Jurisprudence teaches us that "a person can sell only what he owns or is authorized to sell; the buyer can as a consequence, acquire no more than what the seller can legally transfer." No one can give what he does not have — *nemo dat quod non habet.*[44] The sale of the property to Marcelino and Rodulfo is null and void insofar as it prejudiced Gomercindo's rights and interest as co-owner of the subject property.

Clearly, as there was no valid sale that was consummated between Mariano and Rodulfo, the latter has nothing to transmit to respondent Mario. Thus, the sale between Rodulfo and Mario is likewise void and cannot be recognized.

Marcelino, Rodulfo and Mario cannot claim that they are purchasers in good faith. A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property.[45] In this case, they purchased the property knowing that it was registered in the name of another person, not of the seller. This fact alone should put them in inquiry as to the status of the property. It is axiomatic that one who buys from a person who is not a registered owner is not a purchaser in good faith.[46] Hence, they cannot invoke good faith on their part. They are not, however, without remedy. They can still go after their respective transferors (sellers) and their heirs.

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44 *Nool v. Court of Appeals*, 342 Phil. 106, 118 (1997).
45 *Heirs of Macalalad v. Rural Bank of Pola, Inc.*, G.R. No. 200899, June 20, 2018.
46 *Samonte v. Court of Appeals*, 413 Phil. 487, 498 (2001).

Roberta is only entitled to one-fourth undivided portion of the property

It was equally erroneous for Roberta to adjudicate to herself the entire property and make selective confirmation of the Deeds of Absolute Sale executed by her father. As earlier discussed, Roberta is only entitled to one-fourth of the subject property, which is her undivided share in the estate of her mother (Marcosa) who had long passed away in the 1930s. Roberta can no longer lay claim on the three-fourths undivided share of her father (Sixto) to the subject property at the time of his death. As records show, during the lifetime of Sixto, the latter had already sold his undivided share in the subject property, hence, Roberta could no longer inherit it. Hence, the "Extrajudicial Settlement by Sole and Only Heir"[47] executed by Roberta is void insofar as she adjudicated unto herself the entire subject property, to the prejudice of those persons who have already acquired proprietary rights over their respective shares. Also the Confirmation of Deed of Absolute Sale which is also embodied in the said Extrajudicial Settlement cannot be given effect. Apart from the reasons as exhaustively discussed earlier, it is not necessary for Roberta to confirm said sales in order to validate them. Her father, being the rightful owner of his undivided share in the co-owned property had all the rights to dispose of the same (in his lifetime) without any need of subsequent ratification from his co-owners/heirs.

Finally, it bears to stress that even if some of the existing titles that were already issued (*i.e.*, in the name of spouses Nicomedes and Gaudencia, and Gomercindo) were consistent with the pronouncement of this Court in this Decision, it is imperative that all of the said titles must still be cancelled as they were based on erroneous partition of the rightful owners' undivided share on the land. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership.[48] To be sure, a certificate of title is merely an evidence of ownership or title over the particular property described therein.[49] Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[50] In view of the Court's ruling, the subject land is co-owned not only by Nicomedes and Gaudencia, and Gomercindo and Estela, but also by Roberta, and Antonio and Jean. Hence, a new partition is in order, to wit: (a) to Gomercindo, married to Estela, an area containing 1,331.75 sq m, more or less; (b) to spouses Antonio and Jean, an area containing 2,363.5 sq m, more or less; (c) to spouses Nicomedes and Gaudencia, an area containing 300 sq

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47 *See* Annotation in OCT No. 3456, *rollo*, p. 63.

48 *Dy v. Aldea*, G.R. No. 219500, August 9, 2017, 837 SCRA 10, 26.

49 *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 377 (2003).

50 Id.

m, more or less; and (d) to Roberta, an area containing 1,331.75 sq m, more or less.

Considering the foregoing disquisitions, the instant petition is **PARTLY GRANTED**. Hence, the appealed Decision dated November 20, 2014 of the Court of Appeals-Cebu City in CA-G.R. CEB C.V. No. 04753 insofar as it affirmed the RTC, is **MODIFIED** as follows:

1. The Deed of Absolute Sale dated February 16, 1978 executed by Nicolas Aying, married to Maura Augusto in favor of Gomercindo Jimenez to the extent of 1,331.75 square meters of Lot No. 4277 is declared **VALID**;

2. The Deed of Absolute Sale dated November 25, 1989 executed by Filomeno Augusto in favor of Antonio Carlota Dy involving 2,363.5 square meters of Lot No. 4277 is declared **VALID**;

3. The Deed of Absolute Sale dated October 10, 1989 executed by Filomeno Augusto in favor of Nicomedes Augusto involving 300 square meters of Lot No. 4277 is declared **VALID**;

4. The Deed of Absolute Sale dated July14, 1987 executed by Mariano Silawan in favor of Marcelino Paquibot is declared **VOID**;

5. The Deed of Absolute Sale dated May 23, 1994 executed by Rodulfo Augusto in favor of Mario Dy is declared **VOID**; and

6. The Extrajudicial Settlement by Sole and Only Heir executed by Roberta Silawan insofar as the 1,331.75 square meters representing one-fourth of her undivided share in Lot No. 4277 is declared **VALID**. The Confirmation of Sale embodied in the said document is **STRUCK DOWN.**

Pursuant thereto, the subject property (Lot No. 4277) comprising an area of 5,327 square meters shall be partitioned to the following persons, in the following manner:

1. To Gomercindo Jimenez, married to Estela Jimenez, an area containing 1,331.75 square meters, more or less;

2. To spouses Antonio Carlota Dy and Jean Dy, an area containing 2,363.5 square meters, more or less;

3. To spouses Nicomedes Augusto and Gaudencia Augusto, an area containing 300 square meters, more or less; and

4. To Roberta Silawan, an area containing 1,331.75 square meters, more or less.

Consequently, the Register of Deeds of Lapu-Lapu City is hereby **ORDERED** to **CANCEL** all Transfer Certificates of Title issued replacing OCT No. RO-3456, as well as their corresponding Tax Declarations, as follows: (a) TCT No. 48562 in the name of spouses Nicomedes Augusto and Gaudencia Augusto; (b) TCT No. 48563 in the name of Gomercindo Jimenez, married to Estela Jimenez; (c) TCT No. 48564 in the name of Marcelino Paquibot, married to Elena Paquibot; and (d) TCT No. 48565 in the name of Roberta Silawan, and **ISSUE** new ones in accordance with this Decision.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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.

LUCAS P. BERSAMIN
Chief Justice