

Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

**NORMA C. MAGSANO, ISIDRO
 C. MAGSANO, RICARDO C.
 MAGSANO, ROQUE C.
 MAGSANO, JR., NIDA M.
 CAGUIAT, PERLITA
 MAGSANO, and SALVADOR C.
 MAGSANO,**

Petitioners,

G.R. No. 215038

Present:

SERENO, *C.J.*, Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ.*

- versus -

**PANGASINAN SAVINGS AND
 LOAN BANK, INC. and
 SPOUSES EDDIE V. MANUEL
 and MILAGROS C.
 BALLESTEROS, substituted by
 her heirs: GEMMA C. MANUEL-
 PEREZ, ANGELO JOHNDREW
 MANUEL, and RESSY C.
 MANUEL,**

Respondents.

Promulgated:

OCT 17 2016

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DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*¹ assailing the Decision² dated February 14, 2014 and the Resolution³ dated October 2,

¹ *Rollo*, pp. 8-18.

² *Id.* at 24-37. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela concurring.

³ *Id.* at 39.

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2014 of the Court of Appeals (CA) in CA-G.R. CV No. 99519, which affirmed the Decision⁴ dated April 27, 2012 of the Regional Trial Court of Dagupan City, Branch 41 (RTC) dismissing the complaint for annulment of real estate mortgage, certificate of sale, sheriff's final sale, deed of sale, and Transfer Certificate of Title (TCT) No. 48754⁵ filed by herein petitioners Norma, Isidro, Ricardo, Roque, Jr., Perlita, and Salvador, all surnamed Magsano, and Nida M. Caguiat (petitioners) against herein respondent Pangasinan Savings and Loan Bank, Inc.⁶ (respondent bank), respondents-spouses Eddie V. Manuel and Milagros C. Ballesteros (Sps. Manuel), and Sheriff Reynaldo C. Daroy (Sheriff Daroy), but deleted the awards of exemplary damages, attorney's fees, appearance fee, and litigation expenses in the latter's favor.

The Facts

On July 1, 1991, spouses Roque Magsano (Roque) and Susana Capelo (Susana; collectively, mortgagors), the parents of petitioners,⁷ purportedly executed in favor of respondent bank a Real Estate Mortgage⁸ over a 418 square-meter parcel of land located in Dagupan City, covered by TCT No. 48754,⁹ as well as the improvements thereon (subject property), as security for the payment of their ₱35,000.00 loan.¹⁰

The mortgagors, however, defaulted in the payment of their loan obligation when it fell due, causing respondent bank to extra-judicially foreclose the mortgaged property¹¹ in accordance with Act No. 3135,¹² as amended, with notice to the mortgagors,¹³ and, in the process, respondent bank emerged as the highest bidder in the public auction sale held on March 21, 1994 for a total bid price of ₱65,826.69.¹⁴ The mortgagors then failed to redeem the property within the redemption period¹⁵ which led to the cancellation of TCT No. 48754 and the issuance of TCT No. 65394¹⁶ in the name of respondent bank.¹⁷ The latter subsequently sold¹⁸ the same to Sps. Manuel who were issued TCT No. 67491.¹⁹

⁴ Id. at 85-96. Penned by Judge Emma M. Torio.

⁵ Should be TCT No. 65394 and all derivative titles therefrom.

⁶ Formerly "Pangasinan Savings and Loan Association, Inc."

⁷ See *rollo*, pp. 41-42.

⁸ Id. at 46-47.

⁹ Not attached to the *rollo*.

¹⁰ See *rollo*, pp. 68 and 86.

¹¹ See *id.*

¹² Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES" (March 6, 1924).

¹³ See *rollo*, pp. 94-95.

¹⁴ See Certificate of Sale dated April 5, 1994 signed by Sheriff IV Vinez A. Hortaleza for Clerk of Court & City Sheriff, *Ex-Officio* Alicia Bravo-Fabia; *id.* at 48, including dorsal portion.

¹⁵ See Sheriff's Final Sale dated February 12, 1996; *id.* at 49-50.

¹⁶ *Id.* at 51, including dorsal portion.

¹⁷ See *id.* at 86.

¹⁸ See Deed of Absolute Sale dated February 19, 1997; *id.* at 67, including dorsal portion.

¹⁹ *Id.* at 52, including dorsal portion.

Despite repeated demands, the mortgagors refused to vacate the premises; hence, respondent bank applied for²⁰ and was granted a writ of possession²¹ over the subject property and, thereafter, a writ of demolition,²² resulting in the demolition of petitioners' houses.²³

Consequently, on September 6, 2004, petitioners filed a complaint²⁴ for annulment of Real Estate Mortgage, Certificate of Sale, Sheriff's Final Sale, Deed of Sale, and TCT No. 48754²⁵ against respondent bank, Sps. Manuel, and Sheriff Daroy (defendants) before the RTC, docketed as Civil Case No. 2004-0316-D, which they amended²⁶ on September 3, 2007.²⁷ They averred that Roque had already passed away on April 17, 1991,²⁸ or prior to the execution of the Real Estate Mortgage on July 1, 1991; hence, the said mortgage was null and void, and could not have conferred any right on the subject property in favor of respondent bank which it could pass to Sps. Manuel.²⁹ They further claimed that the said property is their family home, but the consent of the majority of the beneficiaries had not been secured. They likewise asserted that Sps. Manuel were aware that: (a) the foreclosure proceedings were invalid; and (b) petitioners were in possession of the subject property, hence, purchasers in bad faith.³⁰

For their part,³¹ defendants denied knowledge of the death of Roque,³² and averred that petitioners have no cause of action to seek the annulment of the Real Estate Mortgage since they were not parties thereto.³³ They contended that assuming that the latter have a cause of action, the same had prescribed pursuant to Articles 1144, 1149, and 1150 of the Civil Code.³⁴ They further argued that petitioners are estopped from questioning the validity of the Real Estate Mortgage, considering that they: (a) are bound by the acts of their mother, Susana, who signed the same, and is presumed to be the author of the misrepresentation/falsification, and benefited from the proceeds of the loan;³⁵ and (b) participated in the proceedings for the issuance of the writ of possession.³⁶

²⁰ See *Ex-Parte* Motion/Petition for Issuance of Writ of Possession dated June 6, 1997; *id.* at 53-56.

²¹ Not attached to the *rollo*.

²² See Order dated July 20, 2004 signed by Judge Silverio O. Castillo; *rollo*, p. 66.

²³ See *id.* at 69 and 72.

²⁴ Not attached to the *rollo*. See *id.* at 9.

²⁵ Should be TCT No. 65394 and all derivative titles therefrom.

²⁶ See Amended Complaint dated August 30, 2007; *rollo*, pp. 41-45.

²⁷ See *id.* at 9.

²⁸ See Certificate of Death; *id.* at 56A, including dorsal portion.

²⁹ See *id.* at 43-44.

³⁰ See *id.* at 43.

³¹ Except Milagros C. Ballesteros who is already dead at the time of the filing of defendants' answer. See Amended Answer with Counterclaim and Affirmative Defenses dated March 18, 2009; *id.* at 57-63.

³² *Id.* at 57.

³³ *Id.* at 59.

³⁴ See *id.* at 60.

³⁵ See *id.* at 61.

³⁶ See *id.* at 60.

The RTC Ruling

In a Decision³⁷ dated April 27, 2012, the RTC dismissed the complaint for lack of merit.³⁸ It declared that petitioners have no cause of action against the defendants,³⁹ holding them bound by the misrepresentation of their mother who signed the Real Estate Mortgage, the authenticity of whose signature they never contested.⁴⁰ And even assuming that petitioners have a cause of action, the RTC ruled that the same is barred by prescription, considering that the action to annul the Real Estate Mortgage and the foreclosure sale was filed beyond the prescriptive period from the time their causes of action accrued,⁴¹ pursuant to Articles 1144,⁴² 1149,⁴³ and 1150⁴⁴ of the Civil Code. Moreover, the RTC deemed it proper to grant respondent bank's claims for attorney's fees, appearance fees, litigation expenses, exemplary damages, and costs of suit.⁴⁵

Aggrieved, petitioners elevated⁴⁶ the matter before the CA.

The CA Ruling

In a Decision⁴⁷ dated February 14, 2014, the CA affirmed the RTC's findings, but deleted the awards of exemplary damages, attorney's fees, appearance fees, and litigation expenses for lack of factual and legal bases.⁴⁸ On the main, it held that while the Real Estate Mortgage was void as to the share of Roque who was shown to be already deceased at the time the same was executed, rendering respondent bank a mortgagee in bad faith, it declared Sps. Manuel innocent purchasers for value whose rights may not be prejudiced.⁴⁹

Petitioners filed a motion for reconsideration,⁵⁰ which was, however, denied in a Resolution⁵¹ dated October 2, 2014; hence, the instant petition.

³⁷ Id. at 85-96.

³⁸ Id. at 96.

³⁹ Id. at 92.

⁴⁰ Id. at 93-94.

⁴¹ See id. at 95.

⁴² Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment.

⁴³ Art. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

⁴⁴ Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

⁴⁵ See *rollo*, p. 96.

⁴⁶ See Brief for the Plaintiffs-Appellants dated February 4, 2013; id. at 74-84.

⁴⁷ Id. at 24-37.

⁴⁸ Id. at 35-37.

⁴⁹ See id. at 33-35.

⁵⁰ Not attached to the *rollo*.

⁵¹ *Rollo*, p. 39.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not: (a) the Real Estate Mortgage was void; and (b) Sps. Manuel were purchasers in good faith.

The Court's Ruling

The petition is partly granted.

Preliminarily, the rule is settled that the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court contemplates only questions of law, not of fact. While it is not the function of the Court to re-examine, winnow and weigh anew the respective sets of evidence of the parties,⁵² there are, however, recognized exceptions,⁵³ one of which is when the inference drawn from the facts was manifestly mistaken, as in this case.

It is undisputed that at the time the Real Estate Mortgage was constituted on July 1, 1991, Roque was already deceased. Upon his death on April 17, 1991, the conjugal partnership between him and his spouse, Susana, was dissolved pursuant to Article 126 (1)⁵⁴ of the Family Code,⁵⁵ and an implied ordinary co-ownership arose among Susana and the other heirs of Roque with respect to his share in the assets of the conjugal partnership pending liquidation. The ensuing implied ordinary co-ownership is governed by Article 493 of the Civil Code,⁵⁶ to wit:

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**

⁵² *Almagro v. Sps. Amaya, Sr.*, 711 Phil. 493, 503 (2013).

⁵³ Recognized exceptions to the rule are: (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 misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (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; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (See footnote 20 of *Almagro v. Sps. Amaya, Sr.*, id. at 503-504; citations omitted.)

⁵⁴ Art. 126. The conjugal partnership terminates:

(1) Upon the death of either spouse;

x x x x

⁵⁵ In relation thereto, Article 105, Chapter 4 of the Family Code provides that "the provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code x x x."

⁵⁶ See *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*, 672 Phil. 447, 457 (2011).

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limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (Emphasis supplied)

Thus, although Susana is a co-owner with her children with respect to Roque's share in the conjugal partnership, she could not yet assert or claim title to any specific portion thereof without an actual partition of the property being first done either by agreement or by judicial decree.⁵⁷ While she herself as co-owner had the right to mortgage or even sell her undivided interest in the subject property, she could not mortgage or otherwise dispose of the same in its entirety without the consent of the other co-owners. Consequently, the validity of the subject Real Estate Mortgage and the subsequent foreclosure proceedings therefor conducted in favor of respondent bank should be limited only to the portion which may be allotted to it, as Susana's successor-in-interest, in the event of partition, thereby making it a co-owner⁵⁸ with petitioners pending partition. Thus, in *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap*,⁵⁹ the Court held:

While Erna, as herself a co-owner, by virtue of Article 493 of the Civil Code, had the right to mortgage or even sell her undivided interest in the said properties, she, could not, however, dispose of or mortgage the subject properties in their entirety without the consent of the other co-owners. Accordingly, the validity of the subject real estate mortgage and the subsequent foreclosure proceedings therefor conducted in favor of RBCI **should be limited only to the portion which may be allotted to it (as the successor-in-interest of Erna) in the event of partition.** In this relation, the CA's directive to remand the case to the RTC in order to determine the exact extent of the respective rights, interests, shares and participation of respondents and RBCI over the subject properties, and thereafter, effect a final division, adjudication and partition in accordance with law remains in order. Meanwhile, the writ of possession issued in favor of RBCI, and all proceedings relative thereto should be set aside considering that the latter's specific possessory rights to the said properties remain undetermined.⁶⁰ (Emphasis and underscoring supplied)

Moreover, although the Court concurs with the CA's finding that respondent bank was a mortgagee in bad faith for having failed to exercise greater care and due diligence in verifying the ownership of the subject property,⁶¹ contrary to the CA, the Court finds that Sps. Manuel are not innocent purchasers for value who can acquire title to the subject entire property.

While the rule is that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property, **where the land sold is in the possession of a person other than the**

⁵⁷ See id.

⁵⁸ See id. at 458.

⁵⁹ G.R. No. 178451, July 30, 2014, 731 SCRA 244.

⁶⁰ Id. at 257-259.

⁶¹ See *rollo*, pp. 34-35.

vendor, as in this case, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor.⁶² As this Court explained in the case of *Sps. Mathay v. CA*:⁶³

Although it is a recognized principle that a person dealing [with] a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, **it is, of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, i.e.,** whether or not the occupants possess the land *en concepto de dueño*, in concept of owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a "purchaser in good faith."⁶⁴ (Emphases and underscoring supplied)

Here, petitioners were in possession of the subject property when Sps. Manuel bought the same on February 19, 1997 (and even up to the filing of the amended complaint before the RTC on September 3, 2007).⁶⁵ However, records do not show that Sps. Manuel inspected the property and inquired into the nature of petitioners' possession and/or the extent of their possessory rights as a measure of precaution which may reasonably be required of a prudent man in a similar situation, and thereby discover the irregularity in the acquisition of title by the respondent bank. Sps. Manuel, therefore, failed to exercise the diligence required in protecting their rights; as such, the Court cannot ascribe good faith to them.⁶⁶

Furthermore, as correctly pointed out⁶⁷ by petitioners, the claim that one is an innocent purchaser for value is a matter of defense.⁶⁸ Hence, while petitioners alleged that Sps. Manuel were purchasers in bad faith,⁶⁹ the rule is that he who asserts the status of a purchaser in good faith and for value has the burden of proving the same, and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith, i.e., that everyone is presumed to act in good faith.⁷⁰

⁶² See *Sia Tio v. Abayata*, 578 Phil. 731, 746 (2008).

⁶³ 356 Phil. 870 (1998).

⁶⁴ Id. at 892.

⁶⁵ See *rollo*, pp. 41-43 and 67.

⁶⁶ See *Rufloe v. Burgos*, 597 Phil. 261, 272 (2009).

⁶⁷ See *rollo*, pp. 12-13.

⁶⁸ See *Pabalan v. Santarin*, 441 Phil. 462, 473 (2002).

⁶⁹ See *rollo*, p. 43.

⁷⁰ *Spouses Mathay v. CA*, *supra* note 63, at 891; citations omitted.

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Besides, the fact that respondent bank succeeded in consolidating ownership over the subject property in its name did not terminate the existing co-ownership between it and petitioners.⁷¹ In *Nufable v. Nufable*,⁷² the Court had the occasion to rule:

[A] co-owner does not lose his part ownership of a co-owned property when his share is mortgaged by another co-owner without the former's knowledge and consent as in the case at bar. It has likewise been ruled that the mortgage of the inherited property is not binding against co-heirs who never benefitted.

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x x x [W]hen the subject property was mortgaged by Angel Custodio, he had no right to mortgage the entire property but only with respect to his $\frac{1}{4}$ *pro indiviso* share as the property was subject to the successional rights of the other heirs of the late Esdras. Moreover, **in case of foreclosure, a sale would result in the transmission of title to the buyer which is feasible only if the seller can be in a position to convey ownership of the things sold.** And in one case, it was held that a foreclosure would be ineffective unless the mortgagor has title to the property to be foreclosed. Therefore, **as regards the remaining $\frac{3}{4}$ *pro indiviso* share, the same was held in trust for the party rightfully entitled thereto,** who are the private respondents herein.

Pursuant to Article 1451 of the Civil Code, when land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner. Likewise, under Article 1456 of the same Code, if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. In the case of *Noel vs. [CA]*, this Court held that **"a buyer of a parcel of land at a public auction to satisfy a judgment against a widow acquired only one-half interest on the land corresponding to the share of the widow and the other half belonging to the heirs of her husband became impressed with a constructive trust in behalf of said heirs."**

Neither does the fact that DBP succeeded in consolidating ownership over the subject property in its name terminate the existing co-ownership. Registration of property is not a means of acquiring ownership. When the subject property was sold to and consolidated in the name of DBP, it being the winning bidder in the public auction, DBP merely held the $\frac{3}{4}$ portion in trust for the private respondents. **When petitioner Nelson purchased the said property, he merely stepped into the shoes of DBP and acquired whatever rights and obligations appertain thereto.**⁷³ (Emphases supplied)

In light of the foregoing, Sps. Manuel merely stepped into the shoes of respondent bank and acquired only the rights and obligations appertaining

⁷¹ See *Nufable v. Nufable*, 369 Phil. 135, 148 (1999).

⁷² Id.

⁷³ Id. at 146-148; citations omitted.

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thereto. Thus, while they have been issued a certificate of title over the entire property, they shall: (a) only acquire what validly pertains to respondent bank as successor-in-interest of Susana in the event of partition; and (b) hold the shares therein pertaining to the co-owners who did not consent to the mortgage, *i.e.*, petitioners, in trust for the latter⁷⁴ pending partition.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 14, 2014 and the Resolution dated October 2, 2014 of the Court of Appeals in CA-G.R. CV No. 99519 are hereby **REVERSED** and **SET ASIDE**. A new judgment is **ENTERED** as follows:

(1) **DECLARING** the Real Estate Mortgage dated July 1, 1991 **VOID** with respect to the share of deceased Roque Magsano;

(2) **DECLARING** respondents-spouses Eddie V. Manuel and Milagros C. Ballesteros (Sps. Manuel) as co-owners of the subject property with respect to the undivided share of Susana Capelo therein, together with petitioners Norma, Isidro, Ricardo, Roque, Jr., Perlita, and Salvador, all surnamed Magsano, and Nida M. Caguiat (petitioners);

(3) **CANCELLING** Transfer Certificate of Title No. 67491 in the name of Sps. Manuel; and

(4) **REMANDING** the records of the case to the Regional Trial Court of Dagupan City to determine the exact extent of the respective rights, interests, shares, and participation of petitioners and Sps. Manuel over the subject property and, thereafter, effect a final division, adjudication, and partition in accordance with law.

The Writ of Possession issued in favor of respondent Pangasinan Savings and Loan Bank, Inc., formerly Pangasinan Savings and Loan Association, Inc., and all proceedings relative thereto, are further **SET ASIDE**, considering that the latter's specific possessory rights to the said properties remain undetermined.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

⁷⁴ See *id.* at 147-148.

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

See separate concurring opinion

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



MARIA LOURDES P. A. SERENO

Chief Justice

G.R. No. 215038 - NORMA C. MAGSANO, ISIDRO C. MAGSANO, RICARDO C. MAGSANO, ROQUE C. MAGSANO, JR., NIDA M. CAGUIAT, PERLITA MAGSANO, AND SALVADOR C. MAGSANO, petitioners, versus PANGASINAN SAVINGS AND LOAN BANK, INC. AND SPOUSES EDDIE V. MANUEL AND MILAGROS C. BALLESTEROS, substituted by her heirs: GEMMA C. MANUEL-PEREZ, ANGELO JOHNDREW MANUEL, and RESSY C. MANUEL, respondents.

Promulgated:

OCT 17 2016

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CONCURRING OPINION

CAGUIOA, J.:

I concur in the result.

In sustaining the validity of the mortgage on the subject conjugal property insofar as the aliquot or pro-indiviso share or interest of Susana is concerned, the *ponencia* relies on Article 493 of the Civil Code. I believe this is inaccurate. Article 493 provides:

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 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.

This article recognizes the absolute ownership by a co-owner of his aliquot or undivided share and his right to alienate, assign or mortgage and even substitute another person in its enjoyment. However, the co-owner's right to alienate is limited to only his undivided share and does not in any way affect any definite portion of the thing owned in common since before partition a co-owner will not know what portion of the property will actually belong to him.¹

The situation in this case involved Susana, the surviving spouse, executing a mortgage over the entire subject conjugal property without the consent of the other heirs of Roque, Susana's deceased husband. This is a situation different from Article 493 because, clearly, Susana did not mortgage only her pro-indiviso share therein, but the entire property. That being the case, the ruling of the Supreme Court in *Estoque v. Pajimula*,² through Justice J. B. L. Reyes, observed:

¹ *Ramirez v. Bautista*, 14 Phil. 528 (1909).

² 133 Phil. 55, 58 (1968).

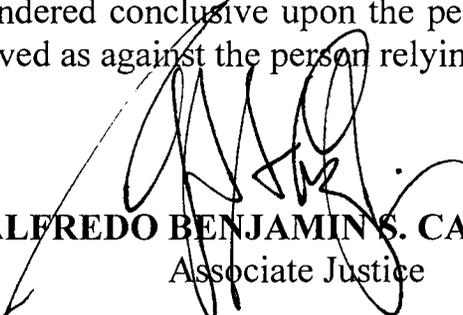
x x x The deed of sale to Estoque x x x clearly specifies the object sold as the southeastern third portion of Lot 802 of the Rosario Cadastre, with an area of 840 square meters, more or less. Granting that the seller, Crispina Perez Vda. de Aquitania could not have sold this particular portion of the lot owned in common by her and her two brothers, Lorenzo and Ricardo Perez, by no means does it follow that she intended to sell to appellant Estoque her 1/3 undivided interest in the lot aforementioned. There is nothing in the deed of sale to justify such inference. That the seller could have validly sold her one-third undivided interest to appellant is no proof that she did choose to sell the same. *Ab posse ad actu non valet illatio*.

In *Estoque*, a specific portion of a co-owned property was sold, albeit a specific portion of a land that was owned in common. I believe that this is no different from the situation of Susana who sold the entire co-owned property, that is, a specific parcel of land when she only had an undivided interest therein. Stated differently, the rationale for not recognizing the effectivity of the disposition over a specific portion equally applies to the disposition by a co-owner of the entire co-owned or undivided property that is more than the undivided share rightfully pertaining to the disposing co-owner.

Estoque characterizes the contract entered into by the disposing co-owner as “ineffective, for lack of power in the vendor to sell the specific portion described in the deed.”³ This characterization makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner acquires subsequently the undivided interests of the other co-owners. Such subsequent ratification or acquisition will validate and make the contract fully effective.

Estoque was a decision rendered by this Court *en banc*, and has not been expressly overturned⁴; hence, it remains a sound case law, which I believe should be the controlling jurisprudence.

Even if Article 493 is inapplicable in this case, I concur in the conclusion that the validity of the mortgage executed by Susana binds her undivided interest in the subject conjugal property based on the principle of estoppel. Under Article 1431 of the Civil Code, “[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.”


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³ *Estoque v. Pajimula*, id. at 58-59.

⁴ 1987 CONSTITUTION, Article VIII, Section 4(3) states that “Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided *en banc*: **Provided**, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.”