Republic of the Philippines
Supreme Court
Baguio City

**SECOND DIVISION**

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| **HEIRS OF ANTERO SOLIVA,**<br>Petitioner,<br><br>- versus -<br><br>**SEVERINO, JOEL, GRACE, CENON, JR., RENATO, EDUARDO, HILARIO, all surnamed SOLIVA, ROGELIO V. ROLEDA, and SANVIC ENTERPRISES, INC., represented by its Manager, SANTOS PORAQUE,**<br>Respondents. | **G.R. No. 159611**<br><br>Present:<br><br>CARPIO, *J., Chairperson,*<br>BRION,<br>DEL CASTILLO,<br>MENDOZA, and<br>LEONEN, *JJ.*<br><br>Promulgated:<br><br>22 APR 2015 |

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## DECISION

**BRION, *J.*:**

We resolve in this petition for review on *certiorari*[1] the challenge to the **May 23, 2003** decision[2] and **August 20, 2003** resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 56681.

The CA affirmed with modification the **January 25, 1997** decision[4] of the Regional Trial Court *(RTC)* of Calbayog City, Branch 32 in Civil Case No. 451 – a complaint for Partition with Accounting filed by petitioner ***Antero*** Soliva, together with ***Victoriano*** Soliva, and ***Sergio*** and ***Romeo***, both surnamed Timan, against respondents ***Severino, Joel, Grace, Cenon,*** Jr., ***Eduardo, Renato***, and ***Hilario***, all surnamed Soliva; Rogelio V. ***Roleda***;

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1 *Rollo*, pp. 8-41.

2 Id. at 42-60; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Oswaldo D. Agcaoili and Edgardo F. Sundiam.

3 Id. at 61; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Andres B. Reyes, Jr. and Edgardo F. Sundiam.

4 Penned by Judge Clemente C. Rosales, CA *rollo,* pp. 11-26; records, pp. 490-505.

and Sanvic Enterprises, Inc. *(SEI)*, as represented by its manager Santos ***Poraque***.

## The Factual Antecedents

At the core of the controversy is a 14,609-square meter parcel of land (as finally determined by the RTC), situated in Cagsalaosao, Calbayog City and designated as **Parcel 2** in the **Plan of Land**.[5] The Plan divided Parcel 2 into six (6) portions, namely:

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| 1. | Lot 1 | - | 828 square meters |
| 2. | Lot 2-A | - | 3,305 square meters |
| 3. | Lot 2-B | - | 877 square meters |
| 4. | Lot 3 | - | 2,741 square meters |
| 5. | Lot 4 | - | 3,142 square meters |
| 6. | Lot 5 | - | 3,716 square meters |

On **November 22, 1991**, Antero instituted the Complaint for Partition and Accounting, originally against Severino, Victoriano, Joel, Grace, Cenon, Renato, Eduardo, Hilario, Sergio, Romeo, and Roleda. He subsequently amended the complaint, twice – on April 8, 1992[6] and on August 12, 1992[7] – joining Victoriano, Sergio and Romeo as plaintiffs, and impleading the SEI as additional defendant.

Antero, *et al.* prayed the RTC to: (1) declare the 1970 Pacto de Retro Sale as an equitable mortgage; (2) order the partition of Parcels 1 and 2; (3) order Cenon's heirs to account for the proceeds of the sale of the portion of Parcel 2 which Cenon sold to Roleda, with legal interest to be counted from 1986; and (4) order SEI to vacate the premises and to pay rentals in the amount of □500.00 a month until the termination of the action.

For a fuller understanding of what happened in this case, we recite below the facts, as gathered by the CA and the RTC.

The Spouses ***Ceferino*** (also known as Rufino) Soliva and ***Juana*** Endeza possessed and owned, during their lifetime, three parcels of land in Calbayog City, specifically:

(1) a 1.436-hectare lot (**Parcel 1**) under Tax Declaration *(TD)* **No. 42753**;

(2) a **9,447-square meter** lot (**Parcel 2**) under **TD No. 24419**, (a **1,600-square meter portion** of this lot, however, was

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5 Exhibit G-1, Records, p. 125.

6 Antero filed a Motion to Admit Amended Complaint, with the Amended Complaint; Victoriano, Sergio and Romeo joined Antero as plaintiffs. The RTC admitted the amended complaint in its April 20, 1992 Order.

7 Antero, with Victoriano, Sergio and Romeo, filed a Motion for Leave to Amend Complaint to Include Indispensable Parties, with the Second Amended Complaint; they impleaded SEI as additional defendant.

owned by Brigida ***Mancol*** which the spouses held for Mancol as her tenants); and

(3) a 5,136-square meter Riceland under **TD No. 14298**.

Ceferino died in 1954, while Juana died in 1972. They had five children, namely: Dorotea (deceased), Cenon, Severino, Victoriano and Antero. Dorotea is survived by Romeo and Sergio.

Earlier or on June 22, 1949, Mancol sold to Cenon the 1,600-square meter portion of Parcel 2 through a notarized deed entitled "*Escritura de Compra-Venta Absoluta*."[8] As Cenon then lived in Manila, he left the possession and enjoyment of this portion to his parents. However, when Ceferino died in 1954, Cenon took over the administration of the entire estate, including Parcel 1.

In March 1959, Severino received as his share in their parents' estate the 5,136-square meter riceland covered by TD No. 14298. Severino subsequently sold this lot through a Deed of Absolute Sale[9] to Fortunato Calagos on April 30, 1959.

On November 13, 1970, Juana sold to Cenon Parcel 2 through a Deed of Conditional Sale with Pacto A Retro *(1970 Pacto de Retro Sale)*.[10] In 1975, TD No. 24419 covering Parcel 2 was cancelled and **TD No. 38009** was issued in the name of Cenon.

On January 21, 1986, Cenon sold to Roleda a 4,092-square meter portion of Parcel 2.[11] TD No. 38009 was subsequently cancelled and **TD No. 4778** was issued in Roleda's name.

On August 14, 1991, Roleda sold to SEI, through Poraque, the 4,092-square meter portion which he bought from Cenon,[12] along with Lot 2-C of the Plan of Land which Roleda acquired from a certain Silverio Agura.

Meanwhile, Cenon died in 1987; he was survived by his children, namely: Joel, Grace, Cenon, Renato, Eduardo and Hilario.

***Proceedings before the RTC***

On May 14, 1992, the RTC appointed retired Deputy Sheriff Eufrocenio Olifernes as Commissioner to relocate the two parcels of land described in the complaint – Parcels 1 and 2 – and to determine the exact portion of Parcel 2 which Cenon allegedly sold to Roleda.

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8 Exhibit L, Records, pp. 405-408.
9 Exhibit K, Records, pp. 303-G, 303-H.
10 Exhibit 4, p. 415.
11 Exhibit 13, Records pp. 426-427.
12 Exhibit 14, Records p. 430.

On June 22, 1992, the appointed Commissioner submitted his Report[13] increasing to 10,906 square meters, from 9,447 square meters as stated in the complaint, the area covered by Parcel 2. The Report attributed the discrepancy to an error made in the Cadastral Survey.

On January 13, 1993, and in the course of the trial on the merits, the RTC and the parties agreed to a second relocation survey of the property. For purposes of this relocation survey, the RTC appointed Geodetic Engineers Felimon Mancol and Felomino Unga as Commissioners. Based on the testimonies and declarations of the claimants, the Commissioners prepared and submitted the Plan of Land (as outlined above) together with their Report[14] that reflected a total area of 14,609 square meters for Parcel 2.

As the defendants disputed only the plaintiffs *a quo's* claim of ownership over Parcel 2, the RTC rendered a partial decision on December 14, 1994.[15] It declared Parcel 1 as owned in common by the plaintiffs and the defendants.

***The January 25, 1997 RTC Decision***

The RTC disposed of the case in the following manner:[16]

> (1) Lots 2-A (3,305 square meters), 2-B (877 square meters) and 2-C (952 square meters) of the Plan of Land are exclusive properties of SEI;
>
> (2) Lots 1, 3 and 5 of the Plan of Land are owned in common by Antero, Victoriano, and Romeo and Sergio (Dorotea's heirs);
>
> (3) Lot 4 (3,140 square meters) of the Plan of Land, occupied by the National Highway, forms part of Parcel 2 covered by TD No. 24419; and
>
> (4) Severino and the heirs of Cenon are excluded from any share in the remaining portion of Parcel 2 after deducting, from its total area of 14,609 square meters, the area corresponding to Lots 2-A and 2-B sold to SEI.

The RTC ruled that: *first,* Lot 2-C lies at the west of, and, therefore, not part of Parcel 2. The RTC upheld SEI's claim over Lot 2-C as none of the parties disputed such claim.

*Second,* Roleda's claim over Lot 1 of the Plan of Land, which he allegedly bought from Esteban Ultra, is not supported by evidence.

*Third,* Severino is excluded from the partition of Parcel 2 as he had already received his share in their parents' inheritance – the 5,136-square

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13 Exhibit A/15, Records, pp. 70-72.
14 Exhibit G, Records, p. 124.
15 Records, pp. 332-336.
16 See RTC January 25, 1997 decision, *supra* note 4.

meter parcel of Riceland covered by TD No. 14298. As stated in the 1959 Deed of Absolute Sale between Severino and Fortunato Calagos, Juana, Cenon, Antero and Victoriano confirmed and agreed to the "sale of the land as part of the real estate adjudicated and given to Severino x x x as his share in the inheritance." In fact, this 5,136-square meter parcel of land far exceeds the portion he would have received as share in Parcel 2. Hence, he is no longer entitled to participate in its partition.

*Fourth* and last, Cenon is likewise excluded from the partition of Parcel 2 as he likewise already received his share in their parents' inheritance. Per the records, Cenon purchased from Mancol only a 1,600-square meter portion of Parcel 2. This is clear from the word "tigkapatan" used in the *"Escritura de Compra-Venta Absoluta"* which, per the local vernacular, means an area of 40 by 40 arms length equivalent to 1,600 square arms length, or 1,600 square meters, more or less.

Moreover, the Deed of Absolute Sale between Cenon and Roleda described the portion which Cenon sold to the latter as only a portion, not the whole of Parcel 2.

In short, Cenon could validly sell to Roleda only the 1,600-square meter portion which he bought from Mancol. When he sold to Roleda 4,092 square meters (or 4,182 square meters per the Plan of Land) of Parcel 2, he effectively sold an extra 2,582-square meter portion which rightfully pertains to the heirs of Ceferino and Juana as *pro indiviso* owners.

Accordingly, this 2,582-square meter portion should be treated as his share in their parents' estate that bars him from further participating in the partition of the remaining portion of Parcel 2.

Antero and the defendants *a quo,* except for SEI and Roleda, separately appealed the RTC's January 25, 1994 decision with the CA.

***CA's Decision***

In its May 23, 2003 decision,[17] the CA modified the RTC's decision. It declared the plaintiffs *a quo* – Antero, Victoriano, Romeo, Sergio – and the defendants *a quo* – Joel, Grace, Cenon, Eduardo, Renato, Hilario and SEI – as co-owners of Parcel 2.[18]

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17 *Supra* note 2.

18 The CA determined their respective shares in Parcel 2 as follows:

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| Antero Soliva | - | 1,300.9 square meters as compulsory heir of Ceferino Soliva |
| Victoriano Soliva | - | 1,300.9 square meters as compulsory heir of Ceferino Soliva |
| Romeo Timan | - | 650.45 square meters as representative of Dorotea Soliva |
| Sergio Timan | - | 650.45 square meters as representative of Dorotea Soliva |
| Joel Soliva | - | 1,102.25 square meters as compulsory heir of Cenon Soliva |

The CA agreed that the 1,600-square meter portion of Parcel 2 belongs exclusively to Cenon. Additionally, it pointed out that the *"Escritura de Compra-Venta Absoluta,"* which Mancol executed in favor of Cenon, was duly notarized and therefore a public document that has in its favor the presumption of regularity. As *Antero, et al.* failed to show convincing contradictory evidence, this document proves the clear and unequivocal facts alleged therein, *i.e.,* that Mancol previously owned the 1,600-square meter portion which she sold to Cenon in 1949.

Pursuant to the *"Escritura de Compra-Venta Absoluta,"* Ceferino had no right whatsoever over the 1,600-square meter portion of Parcel 2; his right covered only the 13,009-square meter portion (14,609-1,600) not affected by this document. Thus, when he died in 1954, he transferred to his heirs only the rights which he had over the 13,009-square meter portion.

Likewise, the CA agreed that the 1970 Pacto de Retro Sale between Juana and Cenon is not an equitable mortgage; none of the circumstances or conditions that serve as badges of an equitable mortgage under Article 1602 of the Civil Code was present. Thus, it is a valid and effective Deed of Sale; but, only as regards the portion of Parcel 2 over which she has an alienable title or interest.

In these lights, Cenon validly acquired ownership over a total area of 10,706.3 square meters of Parcel 2. As owner, he had all the right to alienate it, either in its entirety or only its portion. Accordingly, his sale to Roleda of the 4,092.8-square meter portion was valid as it falls well within his total property ownership. Consequently, Roleda's sale to SEI of the same 4,092.8-square meter portion in 1991 was also valid.

Cenon's remaining 6,613.5 square meters share of Parcel 2 shall, in turn, be divided equally among his heirs.

As for Ceferino's other heirs, they each acquired a *pro indiviso* share over the remaining 3,902.7 square meters of Parcel 2. But, since Severino had already received his share in 1959, only Victoriano, Antero and Dorotea, as represented by her heirs Sergio and Romeo, are entitled to participate in its partition.

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| Grace Soliva | - | 1,102.25 square meters as compulsory heir of Cenon Soliva |
| Cenon Soliva, Jr. | - | 1,102.25 square meters as compulsory heir of Cenon Soliva |
| Renato Soliva | - | 1,102.25 square meters as compulsory heir of Cenon Soliva |
| Eduardo Soliva | - | 1,102.25 square meters as compulsory heir of Cenon Soliva |
| Hilario Soliva | - | 1,102.25 square meters as compulsory heir of Cenon Soliva |
| Sanvic Enterprises Inc. | - | 4,092.8 square meters purchased from Rogelio Roleda |

The CA denied, in its August 20, 2003 resolution,[19] Antero's motion for reconsideration. Hence, this petition.

While this case was pending before the Court, Antero Soliva died on February 15, 2004.[20] He was survived by his wife, Erlinda C. Soliva, and nine (9) children namely: Peter, Susan, Antonio, Antero, Jr., Marlen, Garry, and Annerliza (all surnamed Soliva), Yolanda S. Ibay, and Rosalinda S. Tindogan.

## The Petition

Antero maintains the following arguments:

*First,* Severino already received his share in their parents' inheritance in 1959 which he did not repudiate; hence, no accretion of inheritance could take place. Accretion is proper only when one, of the two or more persons called to the same inheritance, renounces or cannot receive his share or died before the testator, in which case his share shall be added or incorporated to the share of his co-heirs.[21]

Accordingly, Parcel 2 should be divided equally, or in ¼ share each, among Ceferino and Juana's remaining heirs – Antero, Victoriano, and Cenon and Dorotea, as represented by their respective heirs.

*Second,* the 1970 *Pacto de Retro* sale is in fact an equitable mortgage, because: (1) from the time of the alleged sale in 1970 up to her death in 1972, Juana remained in possession of Parcel 2; (2) the evidence on record, *i.e.,* the various TD's and testimony of the witnesses, shows that Cenon resided in Manila, and thus, was never in possession of the property; (3) the taxes for Parcel 2 was paid from its income and fruits; and (4) the 1970 Deed of Pacto de Retro sale states that, after the lapse of the repurchase period, the parties may execute another document to extend it.

Moreover, by claiming that he purchased the property from Juana in 1970, Cenon contradicts his theory that he purchased this same property from Mancol in 1949.

Even assuming, however, that the sale had been a true one, it affects only the extent of Juana's rights and interests over Parcel 2.

In any case, they, as Juana's heirs, still have the right to repurchase the property within 30 days from finality of judgment pursuant to Article 1606 of the Civil Code.

*Third,* Roleda and SEI are buyers and possessors in bad faith as they did not first assess the real status of Parcel 2 prior to the sale. Had they done

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19 *Supra* note 3.

20 Manifestation and Motion dated March 12, 2004, *rollo,* pp. 177-178.

21 Article 1015 of the Civil Code of the Philippines.

so, they would have discovered that the property was owned and possessed by persons other than the seller.

*Finally,* neither did acquisitive prescription run against them as they only learned of the property's sale to Roleda, and subsequently to SEI, in 1991. Since he was, in fact, in actual possession of Parcel 2, no prescription could run against them to bar their claim.

**The Case for the respondents**

The respondents, for their part, argue that Antero simply failed to appreciate the CA's ruling when it declared that whatever rights or supposed share which Severino may have had over Parcel 2 will be added to the respective shares of Ceferino's other heirs. Rather than accretion, the CA ruling to this effect simply means that Severino is no longer entitled to any share in the division of Parcel 2, and the entire distributable portion shall be divided among his remaining heirs – Juana, Victoriano, Antero, Dorotea and Cenon.

Next, the transaction covered by the 1970 Deed of Pacto de Retro sale was, as the CA correctly declared, a true sale, not an equitable mortgage. Antero, *et al.* absolutely failed to present any evidence that this transaction was an equitable mortgage, inasmuch as they failed to prove that Cenon did not possess Parcel 2. As the 1970 Deed of Pacto de Retro sale was duly notarized, it serves as conclusive evidence of the facts stated therein, *i.e.,* that Juana absolutely sold the property, albeit with the right of repurchase.

In fact, the following circumstances clearly and conclusively prove that Cenon was in actual possession of the property: (1) Cenon, and later on his heirs, enjoyed the property's civil, industrial and natural fruits to the exclusion of Ceferino's other heirs; (2) he declared the land in his name for taxation purposes and had continuously paid the taxes due on it; and (3) in the exercise of his ownership rights, he sold to Roleda portion of the property.

Moreover, while the 1970 Deed allows the parties to execute another document to extend the 10-year redemption period after its lapse, Juana and Cenon never executed any period-extending document. Clearly, this shows that they intended the transaction to be a true sale; and, as Juana or her heirs did not exercise their right to redeem within the period granted, Cenon's ownership over the property is now absolute and no longer subject to question.

Further, the 1970 Pacto de Retro Sale is not inconsistent with the 1949 sale by Mancol. For what Mancol sold to Cenon in 1949 was a portion of Parcel 2 that is entirely different from the portion which Juana sold in 1970.

Besides, since the *"Escritura de Compra-Venta Absoluta"* was duly notarized, it likewise has in its favor the presumption of regularity in its

execution and is convincing proof of the fact that Mancol owned a portion of Parcel 2 and that she sold this portion to Cenon in 1949.

Contrary, however, to the RTC's findings, the term "tigkapatan" used in the *"Escritura de Compra-Venta Absoluta"* actually pertains to an area of 80 meters by 80 meters, which means that an arms length is equivalent to two meters. Thus, the area of the portion which Mancol sold to Cenon is actually equivalent to 6,400 square meters, not 1,600 square meters only.

Lastly, Roleda and SEI are buyers in good faith. The testimonies of the various witnesses, both for and against them, show that Roleda and SEI exercised sufficient prudence and diligence in ascertaining the property's ownership prior to the sale. These testimonies also show that Antero, ***et al.*** did not protest, much less object to Roleda and SEI's occupation of and exercise of ownership rights over the portion bought.

## The Issues

The basic issues before us are, *first,* whether Cenon validly acquired ownership of Parcel 2 by virtue of the *"Escritura de Compra-Venta Absoluta."*

*Second,* whether the CA correctly applied the concept of accretion, under Article 1015 of the Civil Code, in distributing Severino's supposed share in Parcel 2 in favor of Ceferino's other heirs.

*Third,* whether the 1970 Pacto de Retro sale was an equitable mortgage under Article 1602 of the Civil Code.

*Fourth,* assuming that the 1970 Pacto de Retro sale was a true sale, not an equitable mortgage, whether it covered only Juana's 6/10 share in Parcel 2; and whether Ceferino's heirs still have 30 days from finality of the RTC decision to repurchase the property.

*Fifth,* and last, whether Roleda and SEI were buyers in bad faith.

## The Court's Ruling

We **DENY** the petition for lack of merit.

Preliminarily, we note that, save for the second, the arguments which Antero raises in this petition are the very same arguments which he raised before the CA. We likewise notice that most, if not all, of these arguments require consideration and review of factual matters.

These reasons, alone, would have been sufficient for the Court to deny outright the petition for clear lack of merit.

In a Rule 45 petition for review on *certiorari*, the Court's review power is limited to errors of law which the lower courts may have committed in the exercise of their jurisdiction. It is also limited by the respect that the Court generally accords to the findings of facts of the trial court, especially when affirmed by the CA.[22]

The Court will generally not entertain a Rule 45 petition in the guise of raising errors of law which, by its allegations, is clearly raising issues of facts that requires reconsideration of matters previously raised and considered by the lower courts. It is only in situations of exceptional character that the Court, in deviation from this rule, will entertain a Rule 45 review of the lower courts' findings.[23]

Although the ruling of the CA is not closely identical with those of the RTC, the declaration of the former in fact corroborates those of the latter. We, therefore, respect the findings of the RTC and the CA as regards the parties' respective rights and interests over Parcel 2.

Nonetheless, we address the issues raised to clarify and emphasize important points in the CA's rulings. We also address, or readdress, these issues to put to rest all contests regarding the partition of Parcel 2 and to determine, as well, the parties' respective rights and interests over the property.

***Cenon validly acquired ownership, by virtue of the "Escritura de Compra-Venta Absoluta," over Parcel 2 but only with respect to the specific portion sold.***

The *"Escritura de Compra-Venta Absoluta,"* which Mancol executed in favor of Cenon, was duly notarized. A notarized document is a public document that carries with it not only the presumption of regularity in its due execution.[24] It also serves, in the absence of sufficiently contradictory

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[22] See *St. Mary's Farm, Inc. v. Prima Real Properties, Inc., et al.,* 582 Phil. 673, 679 (2008); and *Chua v. Westmont Bank,* G.R. No. 182650, February 27, 2012, 667 SCRA 56, 66-67.

[23] See A.M. No. 10-4-20-SC or the Internal Rules of the Supreme Court. The recognized exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the collegial appellate courts went beyond the issues of the case and their findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings of facts of the collegial appellate courts are contrary to those of the trial court; (8) when said findings of fact are conclusions without specific citation or 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 respondents; (10) when the findings of facts of the collegial appellate courts are premised on the supposed absence of evidence, but are contradicted by the evidence on record; and (11) all other similar and exceptional cases warranting a review of the lower courts' findings of facts.

[24] See *Tigno v. Sps. Aquino*, 486 Phil. 254 (2004), where the Court reversed the CA's ruling that declared the subject Deed of Sale valid. The Court upheld the RTC's ruling, and declared this Deed as invalid because of the respondents' failure to prove its due execution and authenticity has not been established. The Deed in this case was notarized by an MTC judge who did not have authority to notarize documents, even under SC Circular No. 1-90 which permits otherwise in exceptional circumstances; it was certified by a jurat instead of an acknowledgment; it was belatedly presented in court; and the signature of the alleged seller was glaringly different as it otherwise appears on the judicial record. In the present

evidence, as clear and convincing proof of the unequivocal facts stated therein.[25]

But more than these, we find nothing in the records which put into question the validity of this document or the circumstances surrounding its execution, or which otherwise casts doubt on the authority of the notarizing officer. In fact, Severino narrated in detail how the document was executed and the persons involved; as witness to the actual execution, Severino's testimony further strengthens the validity of the document.

Accordingly, as *Antero*, *et al.* failed to show evidence sufficiently contradicting these presumptions, the *"Escritura de Compra-Venta Absoluta"* proves the clear and unequivocal fact that Mancol previously owned the 1,600-square meter portion of Parcel 2 and that she sold this portion to Cenon in 1949.

***There was no accretion of inheritance within the terms of Article 1015 of the Civil Code***

Article 1015 of the Civil Code provides:

> Art. 1015. Accretion is a right by virtue of which, when **two or more persons are called to the same inheritance**, devise or legacy, **the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heirs**, co-devisees, or co-legatees. [Emphases supplied.]

Assailing the CA's decision, Antero argues that the CA erroneously applied Article 1015 inasmuch as Severino did not repudiate the share in their parents' inheritance which he received in 1959.

In this regard, the CA said:

> However, inasmuch as it is undisputed that Severino is no longer entitled to any share of parcel 2 since he was already given a separate parcel of land x x x on 30 April 1959, **his supposed share shall be added to those of Juana Endesa, Victoriano, Cenon, Dorotea and Antero increasing their respective share to 1,300 square meters each**, **instead of 1,084 square meters**. [Emphases and underscoring supplied.]

We disagree with Antero's argument. He obviously misinterprets the CA's ruling as he views this "adding" of share within the terms of Article 1015 of the Civil Code.

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petition, the *"Escritura de Compra-Venta Absoluta"* authenticity and due execution were never successfully assailed.

See also *Olivarez, et al. v. Sarmiento,* 577 Phil. 260, 268-269 (2008).

[25] See Section 23, Rule 132 of the Rules of Court. See also *Chua v. Westmont Bank,* G.R. No. 182650, February 27, 2012, 667 SCRA 56, 65-66.

A careful reading of this CA ruling would show that the share of Severino was "added" to the shares of Juana, Victoriano, Cenon, Dorotea and Antero, not pursuant to the provisions of Article 1015 of the Civil Code. The CA decision, for one, did not use the term "accretion;" neither did it mention, in any of its portions, Article 1015, or that the CA was adding Severino's supposed share in accordance with this article.

On the contrary, the CA added Severino's share to those of the other heirs because it recognized the fact that Severino has already received his share of the estate in 1959. Thus, rather than receiving an area of 1,084 square meters each, the remaining five heirs of Ceferino – Juana, Cenon, Victoriano, Dorotea and Antero –would each receive a total area of 1,300.9 square meters of Ceferino's inheritance in Parcel 2, as Severino was no longer entitled to share in its partition.

In effect, the CA simply provided for a clearer and detailed picture of how this distributable portion of Parcel 2 should be computed and how its partition should be effected.

For greater clarity, we illustrate below in clearer terms the manner by which the CA arrived at the parties' respective shares.

*a. Had Severino **not** received any share in their parents' estate in 1959:*

*First,* the 1,600-square meter portion which Cenon purchased from Mancol in 1949 should first be deducted from the total area of Parcel 2 as stated in the Plan of Land. Thus, 14,609 square meters less 1,600 square meters equals 13,009 square meters.[26]

*Second,* the remaining 13,009-square meter area of Parcel 2 should be divided into 2 equal portions – one portion for Juana, as her share in the conjugal partnership, and the other for Ceferino. Thus, each would receive a 6,504.5-square meter portion share of Parcel 2.

And *third,* Ceferino's 6,504.5-square meter share in Parcel 2 should be distributed to his **six** heirs, namely: Juana, Victoriano, Severino, Cenon, Dorotea and Antero. Thus, each heir would be entitled to a **1/6 share** of Ceferino's inheritance or a 1,084-square meter portion each of Parcel 2.

Under this formulation, Parcel 2 would have been divided and partitioned among Ceferino's heirs in the following manner:

1. Juana - 7,588.5 square meters[27]

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[26] On page 11 of the CA decision, the CA typed 13,900 square meters as the area resulting from the deduction of Cenon's share which he bought from Mancol from Parcel 2's total area of 14,609 square meters. We believe this is a typographical error as the CA subsequently typed the correct remaining area of 13,009 square meters, which, when divided into 2 portions, yielded 6,504.5 square meters each, with one portion representing Juana's share in the conjugal partnership.

[27] Juana's total share would have been computed as follows: 6,504.5-square meter share in the conjugal partnership + 1,084-square meter share in Ceferino's inheritance = 7,588.5 square meters.

2. Severino - 1,084 square meters
3. Victoriano - 1,084 square meters
4. Cenon - 2,684 square meters[28]
5. Dorotea - 1,084 square meters
6. Antero - 1,084 square meters

*b. Partition of Parcel 2 that excludes Severino*

*First,* similarly with the above computation, the 1,600-square meter portion which Cenon purchased from Mancol in 1949 should first be deducted from the total area of Parcel 2. This leaves an area of 13,009 square meters.

*Second,* Juana's one-half conjugal partnership share in Parcel 2 should likewise first be deducted, leaving a total distributable area of 6,504.5 square meters.

And *third,* Ceferino's 6,504.5-square meter portion share of Parcel 2 should be distributed to his heirs, **excluding** Severino. Thus, each heir – Juana, Victoriano, Cenon, Dorotea and Antero – would be entitled to a **1/5 share** of Ceferino's inheritance or 1,300.9 square meters each of Parcel 2.

Under this formulation, Parcel 2 was divided and partitioned by the CA among Ceferino's heirs in the following manner:

1. Juana - 7,805.4 square meters[29]
2. Victoriano - 1,300.9 square meters
3. Cenon - 2,900 square meters[30]
4. Dorotea - 1,300.9 square meters
5. Antero - 1,300.9 square meters

Under the first formulation above, Severino would have received a total of 1,084 square meters as his share. Considering, however, that he had already received his share in his parents' estate in 1959, the CA "added" this supposed share to those of Severino's co-heirs –Juana, Cenon, Victoriano, Dorotea and Antero.

In effect, each of these heirs would be receiving an additional 216.8 square meters in their respective shares or a total of 1,300.9 square meters. This is precisely the same area which each heir, except Severino, would be receiving under the second formulation.

In short, the CA's computation of the parties' respective interests in Parcel 2 already excludes Severino – one of the ends which Antero seek in

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[28] Cenon's total share would have been computed as follows: 1,600-square meter portion which he bought from Mancol + 1,084-square meter share in Ceferino's inheritance = 2,684 square meters.

[29] Juana's total share is computed as follows: 6,504.5-square meter share in the conjugal partnership + 1,300.9-square meter share in Ceferino's inheritance = 7,805.4 square meters.

[30] Cenon's total share is computed as follows: 1,600-square meter portion which he bought from Mancol + 1,300.9-square meter share in Ceferino's inheritance = 2,900 square meters.

this petition. For these reasons, we find Antero's argument on this point to be completely without basis.

***The 1970 Conditional Sale with Pacto de Retro is a true sale, not an equitable mortgage under Article 1602 of the Civil Code***

An equitable mortgage is one which, although lacking the proper formalities, form or words, or other requisites prescribed by law for a mortgage, nonetheless shows the real intention of the parties to make the property subject of the contract as security for debt and contains nothing impossible or anything contrary to law in this intent.[31]

A contract of sale, whether an absolute sale or with a right of repurchase, is presumed by law to be an equitable mortgage under any of the following circumstances:[32]

> Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:
>
> 1. When the price of a sale with right to repurchase is unusually inadequate;
>
> 2. When the vendor remains in possession as lessee or otherwise;
>
> 3. When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
>
> 4. When the purchaser retains for himself a part of the purchase price;
>
> 5. When the vendor binds himself to pay the taxes on the thing sold;
>
> 6. In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.
>
> In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.[33]

For the presumption of an equitable mortgage to arise under any of the circumstances enumerated in Article 1602, however, two requisites must

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[31] See *Rockville Excel Int'l. Exim Corp. v. Spouses Culla and Miranda,* 617 Phil. 328 (2009) where the Court declared the subject Deed of Absolute Sale as an equitable mortgage, not a real sale, in view of the following established and duly proved facts, among others: (1) the vendor retained possession of the property; (2) the vendee kept part of the purchase price; and (3) the vendee kept on giving the vendor extensions of time to pay their loan after the latter had already executed the Deed of Absolute Sale. In contrast, Antero, *et al.* in this case failed to prove the existence of any Article 1602's enumerated circumstances.

See also *Olivarez, et al. v. Sarmiento, supra* note 24, at 270.

[32] See Articles 1602 and 1603 of the Civil Code of the Philippines.

[33] Article 1602 of the Civil Code of the Philippines.

concur: (a) that the parties entered into a contract denominated as a contract of sale; and (b) **that their intention was to secure an existing debt by way of mortgage**.[34]

The CA debunked Antero's argument that the 1970 Pacto de Retro Sale was an equitable mortgage because it found nothing which supports his theory that the "sale with right to repurchase was executed to secure a debt."[35] Moreover, it pointed out that Cenon's administration of the property from 1962 up to his death in 1987 indubitably shows that he had, all the while, been in constructive possession of the property.

We uphold these findings of the CA as we equally find nothing on the records that supports a contrary conclusion.[36] More than this, we uphold the CA's ruling on this issue for the following reasons:

*First,* Cenon immediately declared in his name the property sold and had continuously paid taxes for it, sourced from the property's income. As an owner, Cenon has the right to the property's fruits and income which he could freely dispose of according to his discretion. Thus, contrary to Antero's claim, Cenon's payment of the taxes from the property's income is in fact consistent with his exercise of ownership rights over the property.

*Second,* Cenon and his children benefited from the property's produce.

*Third,* Juana, as the vendor a retro, never questioned the nature of the 1970 Pacto de Retro sale as a mortgage, nor argued that in reality it was intended to secure a debt.

*Fourth,* other than his bare allegation, Antero (with the plaintiffs *a quo*) did not present any evidence to prove that what the parties to the 1970 Sale a Retro actually intended was to secure a debt, instead of a true sale. Neither did they prove that she entered into the Pacto de Retro sale believing in good faith that it was one of mortgage.

Further, the records show that Cenon entered into the Pacto de Retro sale to prevent Juana from continuously mortgaging and encumbering the property.[37] Antero never controverted this fact.

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34 *Matanguihan v. Court of Appeals*, G.R. No. 115033, July 11, 1997, 275 SCRA 380, 390; *Avila v. Spouses Barabat,* 519 Phil. 689, 696 (2006).

35 *Rollo*, p. 55; CA Decision p. 14.

36 See *Vda. de Alcantara v. CA*, 322 Phil. 490 (1996).

37 See testimony of Rogelio Roleda, Records, Exhibit 4; TSN, pp. 3-20.
Roleda, on direct examination, testified:

> x x x Up to the time he sold the land to Sanvic no one disturb his possession. Juana Endesa sold the land via s sale with pacto de retro (Exh.'"2' ) to Pacencia Zamora but Cenon Redeemed it. Subsequently, his mother sold the same land to Tomas Delos Santos (evidence with 'Pacto de Retro Sale' marked Exh. '3') but again Cenon Redeemed it (evidenced with private receipt marked Exh. '3-a') to stop her mother from encumbering the land, Cenon Soliva had his other Juana Indisa execute that 'Deed of Conditional Sale' (Exh. 4) (TSN, Dec. 15, p. 3-20, Eduarte).

See also Exhibits 2, 3, and 3-a, Records, pp. 412-414.

And *fifth,* Antero (or the plaintiffs *a quo*) failed to prove bad faith on Cenon's part in entering into the Pacto de Retro sale with Juana. Absent factual and legal basis, we cannot simply accept Antero's bad faith argument. Bad faith is never presumed, while good faith is always presumed; on Antero rested the burden of proving bad faith on Cenon's part, a burden which he failed to discharge.[38]

Of course, we did not fail to notice the clause in the 1970 Deed stating that "*after the lapse of said period the parties may execute another document for any extension of the right of repurchase*."[39] Antero equates this with Article 1602 (3) of the Civil Code which states that "[w]hen upon or after the expiration of the right to repurchase, another instrument extending the period of redemption or granting a new period is executed."

This clause alone, however, did not and cannot sufficiently give the 1970 Pacto de Retro sale the character of an equitable mortgage. Note that the clause used the word "may" in allowing the parties to execute another contract to extend the right of repurchase. "May" is a permissive word which simply provides for a situational possibility – of extending Juana's exercise of her repurchase right – that, in this case did not even materialize.

Thus, in the absence of any evidence which shows intent, on the part of Juana and Cenon, to enter into a mortgage or to use the property sold to secure a debt; or of any fact or circumstance which may reasonably lead this Court to conclude the existence of such intent, we cannot but be convinced that the transaction covered by the 1970 Deed is a true and valid sale, not an equitable mortgage.

Finally, we are not unaware of the equitable-mortgage presumption that the law accords in situations when doubt exists as to the true intent of the parties to the contract.[40] This legal presumption, however, applies only when doubt, in fact, exists as to the nature of the agreement of the parties.

When no doubt exists from the facts and the evidence, and the parties to the transaction (specifically Juana as the vendor a retro in this case), never questioned the nature of their agreement as one of mortgage, then this legal presumption shall not and cannot apply. After all, the contract is the law between them and where its terms are clear and leaves no doubt on their intention, the courts would have no choice but to uphold them.[41]

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38 See Article 527 of the Civil Code.

39 3rd paragraph of the 1970 Deed of Conditional Sale with Pacto de Retro, Exhibit 1-a-c, pp. 309.

40 Article 1603 of the Civil Code.

41 See Article 1370 of the Civil Code. See also *Olivarez v. Sarmiento,* See also *Olivarez, et al. v. Sarmiento, supra* note 24, at 269.

***The Pacto de Retro Sale covered only Juana's 6/10 portion-share over Parcel 2***

While the 1970 Pacto de Retro sale is a true sale, its validity affects only the 6/10 portion of Parcel 2 that rightfully belongs to Juana. This conclusion follows the rule that a person can convey only such property (or right or interest over property) which, at the time it is to be delivered, he or she has such right to convey it.[42]

Interestingly, Antero faults the CA for "not holding that the deed of conditional sale with Pacto de retro dated November 30, 1970 executed by Juana Endeza covered only her 6/10 share in parcel 2."[43] Antero obviously failed to appreciate the import of the CA's ruling as the 7,805.4 square meters which the CA declared as Juana's share represents exactly her 6/10 share in Parcel 2. Clearly, the CA did not commit any error in its determination.

Thus, we find no reason to disturb the CA's findings that the 1970 Pacto de Retro is valid but only as regards Juana's 7,805.4-square meter share – or 6/10 share – over Parcel 2.

***Antero (including the other heirs) has already lost the right to redeem the portion sold; the 30-day redemption period granted under Article 1606 of the Civil Code does not apply***

The Pacto de Retro sale states that Juana, as vendor a retro, reserves for *"herself, her heirs, or assigns the right of repurchase the property described above within a period of TEN (10) YEARS, from and after the date of this instrument, x x x."*

This Deed was executed in 1970, while Antero filed the complaint in 1991. Between these dates – 1970 and 1991 – none of the heirs exercised, or at the least attempted to exercise, this right of repurchase granted to them under the contract. Obviously, at the time Antero, *et al.* filed the complaint in 1991, the 10-year repurchase period under the contract had already lapsed.

Thus, we agree with the CA that Antero, with the other heirs, had already lost whatever right they may have had to redeem the portion which Juana sold to Cenon by virtue of the 1970 Pacto de Retro sale.

In this regard, we likewise agree with the CA that paragraph 3, Article 1606 of the Civil Code cannot apply to Antero's case. This is because paragraph 3 of Article 1606 covers only a situation **where the alleged**

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42 Article 1460 of the Civil Code.

43 *Rollo,* p. 11.

**vendor a retro claims, in good faith**, that their (the vendor and the vendee) real intention (to the contract) was a loan with mortgage.

In *Claravall v. Lim*,[44] the Court explained:

> Article 1606 is **intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage** but decides otherwise. **The seller, however, must entertain a good faith belief that the contract is an equitable mortgage**. In *Felicen, Sr., et al. v. Orias, et al.*, cited by petitioner, the Court explained:
>
> > The application of the third paragraph of Article 1606 is **predicated upon the *bona fides*** of the vendor *a retro*. **It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with *pacto de retro*, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or obligation**. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper: that the vendor *a retro* be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract to be a true sale with right to repurchase. **Conversely, if it should appear that the parties' agreement was really one of sale** – transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property – **and there are no circumstances that may reasonably be accepted as generating some honest doubt as to the parties' intention, the *proviso* is inapplicable**. x x x If the rule were otherwise, it would be within the power of every vendor *a retro* to set at naught a *pacto de retro*, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract – known to him to be in truth a sale with *pacto de retro* – into an equitable mortgage. x x x The rule would thus be made a tool to spawn, protect and even reward fraud and bad faith, a situation surely never contemplated or intended by the law.
> >
> > x x x **where the proofs established that there could be no honest doubt as to the parties' intention, that the transaction was clearly and definitely a sale with *pacto de retro*, the Court adjudged the vendor *a retro* not to be entitled to the benefit of the third paragraph of Article 1606.** (Emphases and underscoring supplied.)

As we have established and explained above, the real intention of Juana and Cenon in this case was to enter into a Pacto de Retro sale, not an equitable mortgage. Obviously, therefore, Antero's reliance on paragraph 3,

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[44] G.R. No. 152695, July 25, 2011, 654 SCRA 301, 311-312, citing *Felicen, Sr. v. Orias,* 240 Phil. 550 (1987); *Heirs of Vda. De Macoy v. Court of Appeals,* G.R. No. 95871, February 13, 1992; and *Agan v. Heirs of Spouses Andres Nueva and Diosdada Nueva,* 463 Phil. 834 (2003).

Article 1606 of the Civil Code is misplaced and his argument on this point cannot prosper.

***Roleda and SEI are buyers in good faith***

In light of the above and consistent with our findings on the validity of the *"Escritura de Compra-Venta Absoluta"* and the 1970 Pacto de Retro Sale, we find that Roleda and SEI are buyers in good faith.

A buyer is in good faith if he buys the property of another, without notice that some other person has a right to, or interest in such property and pays full and fair price for it at the time of the purchase, or before he has notice of the claim or interest of some other person in the property.[45] He buys with the well-founded belief that the person from he receives the property had title to it and had the capacity to convey it.[46]

In Roleda and SEI's case, the facts do not show that they had notice of some other person's interest or right over the 4,092-square meter portion; nor was there any fact or circumstance that could have put them on notice of some other person's right or interest over it. For one, Roleda, and subsequently SEI, bought the 4,092-square meter portion from its owner – Cenon. At the time Cenon sold this portion, he owned a total of 10,706.3 square meters share of Parcel 2. Clearly, the portion which he sold to Roleda fell well within his share in Parcel 2 which, consistent with his ownership, he had every right to dispose of.

Additionally, Cenon presented several TDs, for the property, which were all in his name.

Then too, prior to their purchase, they inspected the property and inquired from the adjoining property owners the status of the property's ownership who all confirmed the absence of any controversy affecting the property.

Lastly, no one, not even Antero, *et al.*, interfered with or complained of Roleda's land extraction activities, or of SEI's construction of buildings over the property.

In short, at the time of Roleda and SEI's purchase, the facts unequivocally point to Cenon (and subsequently to Roleda) as the exclusive owner of the 4,092-square meter portion of Parcel 2.

Overall, we find no reason to disturb the findings of the CA as it affirms with modification the decision of the RTC. And, in view of what we have discussed above, we find no further reason to address the other issues and ancillary matters raised in this petition.

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45 *St. Mary's Farm, Inc. v. Prima Real Properties, Inc. et al., supra* note 22, at 681-682.

46 Id.

**WHEREFORE**, in light of these considerations, we hereby **DENY** the petition. We **AFFIRM** the decision dated May 23, 2003 and the resolution dated August 20, 2003 of the Court of Appeals in CA-G.R. CV No. 56681, with the **MODIFICATION** that the share of petitioner Antero Soliva shall be divided in equal shares among his heirs, namely: his wife, Erlinda, and nine (9) children – Yolanda, Peter, Susan, Antonio, Antero, Jr., Rosalinda, Marlen, Garry and Annerliza. No costs.

**SO ORDERED.**

**ARTURO D. BRION**
Associate Justice

**WE CONCUR:**

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

**MARIANO C. DEL CASTILLO**
Associate Justice

**JOSE CATRAL MENDOZA**
Associate Justice

**MARVIC M.V.F. LEONEN**
Associate Justice

## ATTESTATION

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

**ANTONIO T. CARPIO**
Associate Justice
Chairperson, 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.

**MARIA LOURDES P. A. SERENO**
Chief Justice