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FIRST DIVISION

[G.R. No. 191090. October 13, 2014]

EXTRAORDINARY DEVELOPMENT CORPORATION, *petitioner, vs.* **HERMINIA F. SAMSON-BICO and ELY B. FLESTADO,** *respondents*.

SYLLABUS

1. **CIVIL LAW; CO-OWNERSHIP; RESPONDENTS' CO-OWNERSHIP OVER ONE-HALF OF THE SUBJECT PROPERTY, ESTABLISHED IN CASE AT BAR.—** As borne by the records, respondents were able to convincingly establish their co-ownership over one-half of the subject property. Herminia has successfully established her successional rights over the subject property through her clear testimony and admitted by the opposing counsel. xxx We also took into consideration the admissions made by the heirs of Juan in their Answer to the Complaint filed by respondents before the trial court. xxx 8. [Respondents] together with defendants-Ballesteros and defendant Juan T. Ballesteros, Jr., are co-owners of a parcel of land measuring TWENTY-NINE THOUSAND SEVEN HUNDRED FORTY-EIGHT (29,748) SQUARE METERS situated at Barangay Pantok, Binangonan, Rizal by virtue of succession; xxx Furthermore, Juan testified during the 12 March 2007 hearing that respondents are co-owners of the subject property.

2. **REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; RULE AND EXCEPTION.—** A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding. Sec. 4, Rule 129 of the Revised Rules of Court provides: Sec. 4. Judicial admissions. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. The Answer submitted by the heirs of Juan, as well as the testimony of Juan constitute judicial admissions. Well-

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settled is the rule that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings.

3. CIVIL LAW; OWNERSHIP; PRINCIPLE THAT NO ONE CAN GIVE WHAT ONE DOES NOT HAVE - *NEMO DAT QUOD NON HABET*, EXPLAINED.— EDC avers that said judicial admission should not bind it because it was an innocent purchaser in good faith. The Court of Appeals debunked this contention and correctly ruled, as follows: In a contract of sale, it is essential that the seller is the owner of the property he is selling. Under Article 1458 of the Civil Code, the principal obligation of a seller is to transfer the ownership of the property sold. Also, Article 1459 of the Civil Code provides that the thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. The execution by appellants Ballesteros of the Deed of Absolute Sale over the subject property which they do not exclusively own but is admittedly co-owned by them together with the [respondents], was valid only to the extent of the former's undivided one-half share thereof, as they had no title or interest to transfer the other one-half portion which pertains to the [respondents] without the latter's consent. It is an established principle that no one can give what one does not have – *nemo dat quod non habet*. **Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally. Thus, since appellant EDC's rights over the subject property originated from sellers-appellants Ballesteros, said corporation merely stepped into the shoes of its sellers and cannot have a better right than what its sellers have.** Indeed, a spring cannot rise higher than its source.

4. REMEDIAL LAW; PLEADINGS AND PRACTICE; DUE PROCESS; ESSENCE THEREOF IS THE RIGHT TO BE HEARD.— Moreover, EDC was given an ample opportunity to be heard through counsel. The essence of due process is the right to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Thus, when the party seeking due process was in fact given several opportunities to be heard and air his side, but it is by his own fault or choice he squanders these chances, then his cry for due process must fail.

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5. ID.; ID.; ID.; OBSERVED IN CASE AT BAR.— It is apparent that despite numerous resetting of the case for EDC, it failed to appear because of the absence of its counsel. On 3 October 2007, EDC was required by the court to secure a new lawyer for the next hearing but during the two hearings that followed, no counsel appeared for EDC. It is of no moment that on some dates the resetting was on motion of the other parties to the case. The fact remains that EDC's counsel failed to appear on 25 April, 25 June, 13 August, 5 November and 5 December 2007. Therefore, EDC was not deprived of its day in court and he cannot feign denial of due process.

6. CIVIL LAW; CO-OWNERSHIP; ABSOLUTE RIGHT OF A CO-OWNER TO FREELY DISPOSE OF HIS *PRO INDIVISO* SHARE AS WELL AS THE FRUITS AND BENEFITS THEREOF.— Article 493 of the Civil Code recognizes the absolute right of a co-owner to freely dispose of his *pro indiviso* share as well as the fruits and other benefits arising from that share, independently of the other co-owners, thus: Art. 493. Each co-owner shall have the full ownership of his part of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

7. ID.; ID.; ID.; PRINCIPLE THAT BINDING FORCE OF A CONTRACT MUST BE RECOGNIZED AS FAR AS IT IS LEGALLY POSSIBLE, APPLIED.— In *Spouses Del Campo v. Court of Appeals*, we had the occasion to expound the rights of a co-owner *vis-à-vis* the vendee, thus: x x x Would the sale by a co-owner of a physical portion of an undivided property held in common be valid? x x x On the *first issue*, it seems plain to us that the trial court concluded that petitioners could not have acquired ownership of the subject land which originally formed part of Lot 162, on the ground that their alleged right springs from a void sale transaction between Salome and Soledad. The mere fact that Salome purportedly transferred a definite portion of the co-owned lot by metes and bounds to Soledad, however, does not *per se* render the sale a nullity. This much

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is evident under Article 493 of the Civil Code and pertinent jurisprudence on the matter. More particularly in *Lopez vs. Vda. De Cuaycong, et al*. which we find relevant, the Court, speaking through Mr. Justice Bocobo, held that: …The fact that the agreement in question purported to sell a concrete portion of the hacienda *does not render the sale void,* for it is a well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. *"Quando res non valet ut ago, valeat quantum valere potest."* (When a thing is of no force as I do it, it shall have as much force as it can have.)

8. ID.; ID.; ID.; ID.; CASE AT BAR.— Applying this principle to the instant case, there can be no doubt that the transaction entered into by Salome and Soledad could be legally recognized in its entirety since the object of the sale did not even exceed the ideal shares held by the former in the co-ownership. As a matter of fact, the deed of sale executed between the parties expressly stipulated that the portion of Lot 162 sold to Soledad would be taken from Salome's 4/16 undivided interest in said lot, which the latter could validly transfer in whole or in part even without the consent of the other co-owners. Salome's right to sell part of her undivided interest in the co-owned property is absolute in accordance with the well-settled doctrine that a co-owner has full ownership of his *pro-indiviso* share and has the right to alienate, assign or mortgage it, and substitute another person in its enjoyment.

9. CIVIL LAW; QUASI-CONTRACTS; PRINCIPLE OF UNJUST ENRICHMENT; APPLIED.— We are also in full accord with the appellate court's order for the heirs of Juan to return one-half of the purchase price to EDC. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.

APPEARANCES OF COUNSEL

Yorac Arroyo Chua Caedo & Coronel Law Firm for petitioner.
Rogelio S. Silvestre, Jr. for respondents.

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D E C I S I O N

PEREZ, *J.*:

This treats of the petition for review filed by Extraordinary Development Corporation (EDC) assailing the 31 July 2009 Decision[1] and 22 January 2010 Resolution[2] of the Court of Appeals 10th Division in CA-G.R. CV. No. 91358, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 68 in Civil Case No. 03-035, a "Complaint for Annulment of Contract and Tax Declaration No. 00-BI-030-3512 and Reconveyance of Possession with Damages."

As borne by the records, the facts are as follows:

Apolonio Ballesteros (Apolonio) and Maria Membrebe (Maria) were husband and wife. They begot two (2) children, namely, Juan M. Ballesteros (Juan), who married Leonarda Tambongco (Leonarda) and Irenea Ballesteros (Irenea), who married Santiago Samson (Santiago). Juan and Leonarda begot six (6) children, namely, Leonardo T. Ballesteros (Leonardo), Marcelina T. Ballesteros-Abad (Marcelina), Lydia T. Ballesteros-De Lara (Lydia), Cresencia T. Ballesteros-Lirio (Cresencia), Lourdes T. Ballesteros-Tan (Lourdes), and Juan T. Ballesteros, Jr. (Juan Jr.), while Irenea and Santiago begot two (2) children, namely, Herminia B. Samson-Bico (Herminia) and Merlita Samson Flestado, who married Ely D. Flestado (Ely).

During his lifetime, Apolonio owned a parcel of land consisting of 29,748 square meters situated at *Barangay* Pantok, Binangonan, Rizal covered by Tax Declaration No. BI-030-1509. When Apolonio and Maria died, the property was inherited by Juan and Irenea. When the latter died, the heirs of Juan and Irenea became co-owners of the property.

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[1] *Rollo*, 30-59; Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Juan Q. Enriquez, Jr. and Antonio L. Villamor concurring.

[2] *Id*. at 61-65.

[3] Records, pp. 177-180; Presided by Judge John C. Quirante.

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On 16 April 2002, the heirs of Juan, without the consent of respondents, the heirs of Irenea executed in favor of petitioner EDC a Deed of Absolute Sale[4] covering the subject property for ₱2,974,800.00. Prior to the sale, respondents claimed that they learned that the property had been the subject of a contract to sell between the heirs of Juan and EDC. On 7 March 2000, respondents wrote to EDC informing it of the existence of co-ownership over the subject property.[5] EDC wrote back that it will look into the matter and asked respondents to further establish the basis of their claims.[6]

EDC was able to cause the registration of the Deed of Absolute Sale with the Office of the Provincial Assessor Rizal and transfer the tax declaration over the subject property in its name. This prompted respondents to file the Complaint for Annulment of Contract and Tax Declaration No. 00-BI-030-3512 and Reconveyance of Possession with Damages.[7]

In its Answer, EDC alleged that it is a buyer in good faith and for value of the subject property because it was of the honest belief that the heirs of Juan are the only heirs of the late Apolonio. EDC counterclaimed for damages.[8]

On the other hand, the heirs of Juan asserted that respondents were aware of and were parties to the contract to sell entered into by them and EDC. The heirs of Juan claimed that respondents received their share in the downpayment made by EDC but they were both unpaid of the balance on the cost of the land.[9]

After presentation of respondents' testimonial and documentary evidence, the case was called for hearing on 25 April 2007.

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[4] *Id*. at 21-22.

[5] *Rollo*, p. 84.

[6] *Id*. at 85.

[7] *Id*. at 66-75.

[8] *Id*. at 91-98.

[9] *Id*. at 101-104.

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The case for the presentation of defendants' evidence was reset by the trial court to 25 June 2007 for failure of their respective lawyers to appear without any explanation.[10] On 25 June 2007, the case was once again reset for the same reason.[11] On 13 August 2007, Juan appeared and informed the court that his lawyer is sick while a certain Reggie Angulo appeared before the court and manifested that EDC has not yet hired a lawyer. The trial court reset the case to 3 October 2007 and required the parties to secure a new lawyer. The trial court warned the defendants, petitioner here, and the heirs of Juan that if they fail to do so, their right to present evidence would be waived.[12] On 5 November 2007, the lawyer of the heirs of Juan still failed to appear, while the counsel of the plaintiffs sent a representative to move for the resetting of the case.[13] Finally, on 5 December 2007, the counsel of the heirs of Juan once again failed to appear so upon motion of respondent's counsel, the case was submitted for resolution.[14]

On 3 January 2008, the RTC ruled in favor of respondents. The dispositive portion of the Decision reads:

> WHEREFORE, judgment is rendered as follows:
>
> 1. The Deed of Absolute Sale dated April 16, 2002 covering a property consisting of 29,748 square meters covered by Tax Declaration No. BI-030-1509 is hereby declared null and void to the extent of one half of the property sold or 14,874 square meters.
>
> 2. That the Tax Declaration No. 00-BI-030-3512 in the name of [EDC] is hereby declared null and void and the Provincial Assessor of Rizal or defendant Municipal Assessor of Binangonan, Rizal is hereby ordered to cancel the same, and the Tax Declaration covering the subject parcel of land be reinstated in the name of the heirs of Apolonio Ballesteros and Maria Membrebe.

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[10] *Id*. at 133.

[11] *Id*. at 134.

[12] *Id*. at 135.

[13] *Id*. at 136.

[14] *Id*. at 137.

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3. That the [EDC] is hereby ordered to vacate, surrender or reconvey ownership and possession of the parcel of land subject of the Deed of Absolute Sale to [respondents] or the heirs of Apolonio Ballesteros or that they be reinstated to the lawful ownership of one-half (1/2) of the property sold or 14,874 square meters.

4. The defendants are hereby ordered to pay the following damages to the [respondents] jointly and severally:

a. Moral damages – ₱100,000.00

b. Exemplary damages – [₱]100,000.00

c. Attorney's fees – [₱]100,000.00

5. The defendants are hereby ordered to pay the costs of suit.[15]

The trial court found that respondents and the heirs of Juan are co-owners of the subject property; that at the time of sale, the heirs of Juan did not have the right to sell the one half share of the heirs of Irenea; that the sale did not bind the heirs of Irenea; that there was fraud in the execution of the Deed of Absolute Sale when the heirs of Juan failed to disclose to EDC that one half of the property sold is owned by respondents; and that EDC was not a buyer in good faith because it knew that respondents were co-owners of the subject property because Herminia informed EDC of such fact through a letter dated 9 March 2000.

EDC appealed to the Court of Appeals and assigned the following errors:

I.

THE TRIAL COURT COMMITTED GRAVE ERROR WHEN IT RENDERED A DECISION HOLDING APPELLEES THE LAWFUL OWNER OF ONE-HALF OF THE SUBJECT PROPERTY

II.

THE TRIAL COURT COMMITTED GRAVE ERROR WHEN IT ANNULLED THE 16 APRIL 2002 DEED OF ABSOLUTE SALE AND INVALIDATED THE TITLE OF THE APPELLANT

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[15] *Id.* at 140-141.

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CORPORATION TO THE SUBJECT PROPERTY DESPITE THE COMPLETE ABSENCE OF ANY EVIDENCE TO SUPPORT THE APPELLEES' CLAIM OF OWNERSHIP OVER ONE-HALF OF THE SUBJECT PROPERTY.

III.

THE TRIAL COURT COMMITTED GRAVE ERROR WHEN IT AWARDED MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF THE APPELLEES DESPITE THE UTTER ABSENCE OF EVIDENCE WHICH CAN PROVE THEY ARE ENTITLED TO THE SAME.

IV.

THE TRIAL COURT COMMITTED GRAVE ERROR AND VIOLATED THE RIGHT TO DUE PROCESS OF THE DEFENDANT CORPORATION WHEN IT SUBMITTED THE CASE FOR RESOLUTION WITHOUT PROVIDING THE APPELLANT THE OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF ITS CLAIMS AND DEFENSES.[16]

The heirs of Juan and respondents failed to file their brief so the Court of Appeals submitted the case for resolution.

On 31 July 2009, the Court of Appeals partially granted the appeal. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, appeal is **PARTLY GRANTED**. The Decision dated 03 January 2008 of the Regional Trial Court of Binangonan, Rizal, Branch 68 in Civil Case No. 03-035 is **AFFIRMED** with the following **MODIFICATIONS**:

1. Defendants-appellants Leonardo T. Ballesteros, Marcelina T. Ballesteros-Abad, Lydia T. Ballesteros-De Lara, Cresencia T. Ballesteros-Lirio, Lourdes T. Ballesteros-Tan and Juan T. Ballesteros, Jr. are hereby **ORDERED** to return to defendant-appellant Extraordinary Development Corporation the amount of ₱1,487,400.00 or one-half of the purchase price as stated in the Deed of Absolute Sale dated 16 April 2002;

2. The Deed of Absolute Sale in favor of the [EDC] is valid only to the extent of one-half of the subject property or 14,874

[16] *Id*. at 42-43.

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square meters, but not as to the other half of 14,874 square meters which is co-owned by [respondents];

3. The Provincial Assessor of Rizal is hereby **ORDERED** to **CANCEL** Tax Declaration No. 00-BI-030-3512 in the name of [EDC] and to ISSUE a new one in the names of co-owners [EDC] (one-half of the subject property) and [respondents] (the other half); and

4. The award of moral damages, exemplary damages, and attorney's fees in the amount of ₱100,000.00 each is hereby **DELETED**.

No pronouncement as to costs.[17]

The Court of Appeals ruled that respondents were able to establish their co-ownership over one-half of the subject property. The appellate court pointed out that the heirs of Juan categorically admitted in their Answer, as well as during the hearing the existence of co-ownership. The appellate court agreed with the trial court's finding that the heirs of Juan, as co-owners, could only alienate or convey to EDC their one-half portion of the subject property which may be allotted to them in the division upon the termination of the co-ownership. Thus, the sale will affect only their share but not those of the other co-owners who did not consent to the sale. The appellate court disputed the submission of EDC that whatever admissions made by the heirs of Juan regarding the ownership of the subject property is effective only insofar as they are concerned but such do not bind or affect the defenses it raised. The appellate court declared that the execution by the heirs of Juan of the Deed of Absolute Sale over the subject property which they do not exclusively own but is admittedly co-owned by them together with respondents, was valid only to the extent of the former's undivided one-half share thereof, as they had no title or interest to transfer the other one-half portion which pertains to the appellees without the latter's consent. EDC's invocation of it being a buyer in good faith was not considered by the appellate court because the subject property is an unregistered land and the defense of having purchased the

[17] *Id*. at 55-56.

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property in good faith may be availed of only where registered land is involved and the buyer had relied in good faith on the clear title of the registered owner. The appellate court sustained the trial court's finding that there was no denial of due process as EDC was given the opportunity to advocate its cause and defend its interest.

However, the appellate court reversed the ruling of the trial court that the Deed of Absolute Sale is null and void. According to the appellate court, the same is valid with respect to the transfer of the rights of the co-owners-sellers heirs of Juan over the one-half portion or 14,874 square meters of the subject property, thereby making EDC a co-owner thereof. Consequently, the appellate court ordered the heirs of Ballesteros to return to EDC the amount of ₱1,487,400.00 or one-half of the purchase price of ₱2,974,800.00. The award of moral and exemplary damages, as well as attorney's fees, were deleted for lack of legal and factual bases.

Aggrieved, EDC filed this present petition, ascribing the following errors to the Court of Appeals:

> 43.1 The Court of Appeals committed grave error in ruling that the Respondents are entitled to ½ of the Subject Property despite their utter failure to present evidence which can prove their claim thereto.
>
> 43.2 The Court of Appeals gravely erred in failing to recognize that Petitioner is an innocent party to the instant dispute and is a buyer in good faith and for value.[18]

Interestingly, it was EDC who pursued this petition and insist that respondents failed to prove co-ownership presumably to validate in its entirety the Deed of Absolute Sale it entered into with the heirs of Juan. EDC reiterates its argument that the testimony of Herminia is insufficient to prove that respondents are entitled to inherit one-half of the subject property from Apolonio. According to EDC, respondents should have established that Irenea is a legitimate child of Apolonio; that Irenea and

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[18] *Id*. at 13.

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Juan are the only legitimate compulsory heirs of Apolonio; that Apolonio predeceased Irenea and Juan; that Hermina and Merlita are the legitimate children of Irenea; and that Irenea predeceased Herminia. EDC also maintains that it is a buyer in good faith and that it was respondents who acted in bad faith, thus it prays for damages.

We deny the petition.

As borne by the records, respondents were able to convincingly establish their co-ownership over one-half of the subject property.

Herminia has successfully established her successional rights over the subject property through her clear testimony and admitted by the opposing counsel, *viz*:

DIRECT EXAMINATION BY
ATTY. ROGELIO SILVESTRE, JR.,
ON WITNESS HERMINIA BICO

Q: Mrs. Bico, are you the same Herminia Bico, one of the plaintiffs in this case?
A: Yes, sir.

Q: Do you know the defendants Ballesteros in this case?
A: I know them, sir.

Q: Why do you know them?
A: Because they are my relatives, sir.

Q: Why did you say that they are your relatives?
A: [Their] father and my mother are brother and sister, sir.

Q: What is the name of your mother?
A: Irenea Ballesteros, sir.

Q: What is the name of the father of the defendants Ballesteros?
A: Juan Ballesteros, sir.

Q: So, you mean that they are brother and sister, what is the name of the mother of Irenea Ballesteros and [Juan] Ballesteros?
A: Maria Membrebe, sir.

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Q: What about the father of Irenea Ballesteros and Juan Ballesteros?
A: Apolonio Ballesteros, sir.

Q: So, you are saying that Irenea Ballesteros and Juan Ballesteros being brother and sister they are the children of Maria Membrede (sic) and Apolonio Ballesteros?
A: Yes, sir.

Q: Do you have proof that your mother is Irenea?

ATTY. CERVO
I admit the relationship.

ATTY. SILVESTRE
However, Your Honor, the defendant Extra-Ordinary is denying.

COURT
But they are not here.

ATTY. CERVO
As far as I am concerned…

COURT
As far as the Ballesteros…

ATTY. CERVO
As far as the Ballesteros are concerned they are admitting the relationship.

ATTY. SILVESTRE
But on the next hearing the counsel for the Extra-Ordinary will appear.

COURT
The admission is effective only insofar as the client of Atty. Cervo is concerned.

ATTY. SILVESTRE
That is the reason why I am asking these questions.

COURT
They are not here. So, if they will question it later on they are not here. I think the objection will be too late. If they do not object right now the objection is waived.

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ATTY. SILVESTRE
I went over the record of the case, the complainant and the Answer filed by the defendant now when I read the Answer filed by defendant Ballesteros, defendant Ballesteros are practically admitting everything except for a few allegations.

COURT
Are they disputing relationship?

ATTY. SILVESTRE
No, Your Honor.

COURT
So, if it is not disputed in the Answer, it is considered admitted.

ATTY. SILVESTRE
Okay, Your Honor.

Would counsel for the defendant stipulate that the parents, grandparents as well as the father and the mother are already dead?

ATTY. CERVO
Yes admitted, Your Honor.

COURT
How can you deny that they are already dead?

ATTY. SILVESTRE
We would like to proceed to the markings, Your Honor of the exhibits.

COURT
Proceed.

ATTY. SILVESTRE
There being no objections, we would like to mark the Certificate of Baptism of Irenea Ballesteros, child of Apolonio Ballesteros and Maria Membrebe as Exhibit "A".

COURT
Mark it.

ATTY. SILVESTRE
The name Apolonio Ballesteros and Maria Membrebe be bracketed and marked as Exhibit "A-1".

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COURT
Mark it.

ATTY. SILVESTRE
The Death Certificate of Irenea Samson as Exhibit "B". The name of husband Santiago Samson be bracketed and marked as Exhibit "B-1". The Certificate of Death of Santiago Samson be marked as Exhibit "C".

COURT
Mark them.

ATTY. SILVESTRE
The name Herminia Bico followed by the word daughter be marked as our Exhibit "C-1".

COURT
Mark it.

ATTY. SILVESTRE
The certificate of Live Birth of Herminia Samson be marked as Exhibit "D".

COURT
Mark it.

ATTY. SILVESTRE
The Certificate of Baptism of Merlita Samson as Exhibit "E".

COURT
Mark it.

ATTY. SILVESTRE
The name Santiago Samson and Herminia Ballesteros be bracketed and marked as Exhbit "E-1".

COURT
Mark it.

ATTY. SILVESTRE
Will counsel for defendants Ballesteros stipulate that prior to the death of the sister of the witness Merlita Samson she married the other co-plaintiff Ely Flestado?

ATTY. CERVO
Yes.

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ATTY. SILVESTRE
We would like to mark, Your Honor, the Marriage Contract executed by and between Merlita Samson and Ely Flestado as Exhibit "F".

COURT
Mark it.

ATTY. SILVESTRE
The Certificate of Death of Merlita Flestado be marked as Exhbit "G".

COURT
Mark it.

ATTY. SILVESTRE
One of the entries in the Certificate of Death, Herminia Bico followed by the name sister be bracketed and marked as Exhbit "G-1".

COURT
Mark it.[19]

We also took into consideration the admissions made by the heirs of Juan in their Answer to the Complaint filed by respondents before the trial court. For ready reference, we shall reproduce the pertinent portion of the Answer and the Complaint:

ANSWER

x x x x x x x x x

2. The defendants BALLESTEROS admit the allegations in paragraphs 8, 9, 10, 11, 12 and 13 of the complaint;[20]

COMPLAINT

8. [Respondents] together with defendants-Ballesteros and defendant Juan T. Ballesteros, Jr., are co-owners of a parcel ofland (sic) measuring TWENTY-NINE THOUSAND SEVEN HUNDRED FORTY-EIGHT (29,748) SQUARE METERS situated at Barangay Pantok, Binangonan, Rizal by virtue of succession;

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[19] TSN, 12 March 2007, pp. 4-10.

[20] *Rollo*, p. 101.

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9. [Herminia], defendants Ballesteros and defendant Juan T. Ballesteros are the Heirs of the late Spouses Apolonio Ballesteros and Maria Membrebe who were the parents of the late Juan M. Ballesteros and the late Irenea M. Ballesteros-Samson x x x;

10. During her lifetime, Irenea M. Ballesteros married Santiago Samson, now deceased, with whom she had two (2) children, namely: [Herminia] and Merlita B. Samson x x x;

11. Merlita B. Samson married [respondent] Ely and later died childless and intestate x x x;

12. In his lifetime, Juan M. Ballesteros married Leonarda Tambongco, now deceased, with whom she had six (6) children, namely: defendants Ballesteros and defendant Juan T. Ballesteros, Jr.;

13. Likewise, during the lifetime of Apolonio Ballesteros, he was the owner of the parcel of land mentioned in paragraph 8 hereof and the same was declared for taxation purposes under his name x x x;[21]

Furthermore, Juan testified during the 12 March 2007 hearing that respondents are co-owners of the subject property, to wit:

COURT
Asan si Ballesteros?

ATTY. CERVO
He is in court, Your Honor.

COURT (to Ballesteros)
Q: *Alam mo ba na ang may-ari ng lupa na binenta ninyo ay isa sa may-ari sya?*
A: *Opo.*

Q: So, *hindi lang kayo ang may-ari ng lupa? Ang ina nya kasama doon sa may-ari at kalahati lang ang sa inyo?*
A: *Hindi pa naparti.*

Q: *Kahit hindi pa naparte narerecognize ninyo na ang nanay niya ay isa sa may-ari ng lupa kasama ang tatay mo, hindi ba?*
A: *Opo.*

Q: So, *kalahati ang interest ninyo sa lupa, tama?*
A: *Opo.*

[21] *Id.* at 68-69.

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Q: Why did you sell all?
A: *Hindi pa po bayad lahat, ang hinahabol nila magkabayaran. Kulang pa po ng isang milyon.*

Q: *Ang tanong saiyo, kalahati ng lupa may karapatan ka,* you have a right [to] only to one of the property?
A: *Opo.*

Q: *Bakit sa* Deed of Sale *ibinenta lahat? Wala silang pirma.*
A: *Nakalimutan ko.*[22]

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations or stipulations, or (c) in other stages of the judicial proceeding.[23] Sec. 4, Rule 129 of the Revised Rules of Court provides:

> Sec. 4. Judicial admissions. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

The Answer submitted by the heirs of Juan, as well as the testimony of Juan constitute judicial admissions. Well-settled is the rule that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.[24]

EDC avers that said judicial admission should not bind it because it was an innocent purchaser in good faith. The Court

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[22] TSN, 12 March 2007, pp. 19-20.

[23] *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 365 (2006) citing Regalado, *Remedial Law Compendium*, Volume Two, Seventh Revised Edition at 650.

[24] *Cahilig v. Terencio*, G.R. No. 164470, 28 November 2011, 661 SCRA 261, 271 citing *Maagad v. Maagad*, G.R. No. 171762, 5 June 2009, 588 SCRA 649.

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of Appeals debunked this contention and correctly ruled, as follow:

> In a contract of sale, it is essential that the seller is the owner of the property he is selling. Under Article 1458 of the Civil Code, the principal obligation of a seller is to transfer the ownership of the property sold. Also, Article 1459 of the Civil Code provides that the thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. The execution by appellants Ballesteros of the Deed of Absolute Sale over the subject property which they do not exclusively own but is admittedly co-owned by them together with the [respondents], was valid only to the extent of the former's undivided one-half share thereof, as they had no title or interest to transfer the other one-half portion which pertains to the [respondents] without the latter's consent. It is an established principle that no one can give what one does not have – *nemo dat quod non habet*. **Accordingly, one can sell only what one owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally. Thus, since appellant EDC's rights over the subject property originated from sellers-appellants Ballesteros, said corporation merely stepped into the shoes of its sellers and cannot have a better right than what its sellers have.** Indeed, a spring cannot rise higher than its source.[25] (Emphasis ours)

Moreover, EDC was given an ample opportunity to be heard through counsel. The essence of due process is the right to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Thus, when the party seeking due process was in fact given several opportunities to be heard and air his side, but it is by his own fault or choice he squanders these chances, then his cry for due process must fail.[26]

It is apparent that despite numerous resetting of the case for EDC, it failed to appear because of the absence of its counsel.

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[25] *Rollo*, pp. 51-52.

[26] *Heirs of Bugarin v. Republic*, G.R. No. 174431, 6 August 2012, 678 SCRA 209, 225 citing *Lacson v. Executive Secretary*, G.R. Nos. 165399, 165475, 165404 and 165489, 30 May 2011, 649 SCRA 142, 155; *Estrada v. People*, 505 Phil. 339, 353-354 (2005).

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On 3 October 2007, EDC was required by the court to secure a new lawyer for the next hearing but during the two hearings that followed, no counsel appeared for EDC. It is of no moment that on some dates the resetting was on motion of the other parties to the case. The fact remains that EDC's counsel failed to appear on 25 April, 25 June, 13 August, 5 November and 5 December 2007. Therefore, EDC was not deprived of its day in court and he cannot feign denial of due process.

Having established respondents' co-ownership rights over the subject property, we find no error in the appellate court's ruling sustaining the validity of the Deed of Absolute Sale but only with respect to the rights of the heirs of Juan over one-half of the property.

Article 493 of the Civil Code recognizes the absolute right of a co-owner to freely dispose of his *pro indiviso* share as well as the fruits and other benefits arising from that share, independently of the other co-owners,[27] thus:

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

In *Spouses Del Campo v. Court of Appeals*,[28] we had the occasion to expound the rights of a co-owner *vis-à-vis* the vendee, thus:

> x x x Would the sale by a co-owner of a physical portion of an undivided property held in common be valid? x x x

On the *first issue*, it seems plain to us that the trial court concluded that petitioners could not have acquired ownership of the subject

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[27] *Heirs of Cayetano Pangan and Consuelo Pangan v. Spouses Perreras*, G.R. No. 157374, 27 August 2009, 597 SCRA 253, 260.

[28] 403 Phil. 707 (2001).

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land which originally formed part of Lot 162, on the ground that their alleged right springs from a void sale transaction between Salome and Soledad. The mere fact that Salome purportedly transferred a definite portion of the co-owned lot by metes and bounds to Soledad, however, does not *per se* render the sale a nullity. This much is evident under Article 493 of the Civil Code and pertinent jurisprudence on the matter. More particularly in *Lopez vs. Vda. De Cuaycong, et. al.* which we find relevant, the Court, speaking through Mr. Justice Bocobo, held that:

> …The fact that the agreement in question purported to sell a concrete portion of the hacienda *does not render the sale void*, for it is a well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. "*Quando res non valet ut ago, valeat quantum valere potest*." (When a thing is of no force as I do it, it shall have as much force as it can have.)

Applying this principle to the instant case, there can be no doubt that the transaction entered into by Salome and Soledad could be legally recognized in its entirety since the object of the sale did not even exceed the ideal shares held by the former in the co-ownership. As a matter of fact, the deed of sale executed between the parties expressly stipulated that the portion of Lot 162 sold to Soledad would be taken from Salome's 4/16 undivided interest in said lot, which the latter could validly transfer in whole or in part even without the consent of the other co-owners. Salome's right to sell part of her undivided interest in the co-owned property is absolute in accordance with the well-settled doctrine that a co-owner has full ownership of his *pro-indiviso* share and has the right to alienate, assign or mortgage it, and substitute another person in its enjoyment. Since Salome's clear intention was to sell merely part of her aliquot share in Lot 162, in our view no valid objection can be made against it and the sale can be given effect to the full extent.

We are not unaware of the principle that a co-owner cannot rightfully dispose of a particular portion of a co-owned property prior to partition among all the co-owners. However, this should not signify that the vendee does not acquire anything at all in case a physically segregated area of the co-owned lot is in fact sold to him. Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the

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vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common.[29]

We are also in full accord with the appellate court's order for the heirs of Juan to return one-half of the purchase price to EDC. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[30] Therefore, it is correct for the Court of Appeals to order the heirs of Juan to return the amount of ₱1,487,400.00, representing one-half of the purchase price to prevent unjust enrichment at the expense of EDC.

Lastly, and likewise correctly, the prayer for moral and exemplary damages and attorney's fees being unsubstantiated had to be denied.

WHEREFORE, the instant petition is **DENIED** and the assailed Decision dated 31 July 2009 and Resolution dated 22 January 2010 of the Court of Appeals in CA-G.R. CV. No. 91358 is **AFFIRMED** in *toto*.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perlas-Bernabe, JJ.,* concur.

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[29] *Id.* at 715-717.

[30] *Reyes v. Lim*, 456 Phil. 1, 14 (2003).