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efforts to confirm their tickets in Manila, then in Hongkong, and finally in Tokyo. Resultantly, we find the modification as to the amount of damages awarded just and equitable under the circumstances.

WHEREFORE, the decision appealed from is hereby *AFFIRMED*. Cost against petitioners.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and *Pardo, JJ.*, concur.

Ynares-Santiago, J., no part.

THIRD DIVISION

[G.R. No. 124118. March 27, 2000]

MARINO, RENATO, LETICIA, IMELDA, ALICIA, LIGAYA, and ZENAIDA, all surnamed ADRIANO, *petitioners, vs.* **COURT OF APPEALS, CELESTINA, MANOLO and AIDA, all surnamed ADRIANO,** *respondents.*

SYNOPSIS

Lucio Adriano married Gliceria Dorado, with whom he had three children. After they had separated, Lucio cohabited with Vicenta Villa, with whom he had eight children. After Gliceria died, Lucio married Vicenta but later they also got separated. In 1980, Lucio executed a last will and testament disposing of all his properties and assigning Vicenta, his second wife, and all his children by his first and second marriages as devisees and legatees therein. In February, 1981, Lucio died. Celestina,

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a daughter by the first marriage, who was instituted as executrix in Lucio's will, filed a petition for probate of the will. Despite opposition from Vicenta, the RTC allowed the probate of the will and directed issuance of letters testamentary to Celestina. The Intermediate Appellate Court affirmed the probate of the will. Vicenta died in 1985. While the settlement of estate was pending before the RTC, herein petitioners instituted an action for annulment of Lucio's will claiming that the properties subject therein were properties of the conjugal partnership of Lucio and Vicenta alone, hence, the disposition sought in the said will was void and ineffectual. The trial court favored the evidence presented by the herein private respondents. The action for the annulment of will was dismissed and the settlement, liquidation, and partitioning of the estate of the late Lucio Adriano in accordance with the testamentary provisions set forth in his Last Will and Testament was ordered. The Court of Appeals dismissed petitioners' appeal. The petitioners elevated the case to the Supreme Court.

The Supreme Court affirmed the decision of the Court of Appeals. As found by both the trial court and the Court of Appeals, petitioners not only failed to overcome the presumption of conjugality of the disputed property, but private respondents also presented sufficient evidence to support their allegation that the property was in fact purchased by Lucio with proceeds of the conjugal fund of his first marriage. This factual finding was binding and conclusive upon the Supreme Court and will not be disturbed. Although the property was registered in the name of both Lucio and Vicenta, a constructive trust was deemed created by operation of Article 1456 of the Civil Code over the property which lawfully pertains to the lawfully subsisting marriage of Lucio to Gliceria at that time.

SYLLABUS

1. **CIVIL LAW; PERSONS AND FAMILY RELATIONS; MARRIAGE; PROPERTY RELATIONS; PROPERTY ACQUIRED DURING MARRIAGE PRESUMED TO BE CONJUGAL; EXCEPTION; NOT PRESENT IN CASE AT BAR.** — Petitioners' insistence that a co-ownership of properties existed between Lucio and Vicenta during their period of cohabitation before their marriage in 1968 is without lawful

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basis considering that Lucio's marriage with Gliceria was then subsisting. The co-ownership in Article 144 of the Civil Code requires that the man and woman living together as husband and wife without the benefit of marriage must not in any way be incapacitated to marry. Considering that the property was acquired in 1964, or while Lucio's marriage with Gliceria subsisted, such property is presumed to be conjugal unless it be proved that it pertains exclusively to the husband or to the wife. Thus, the Court ruled in *Pisueña vs. Heirs of Petra Unating and Aquilino Villar,* G.R. No. 132803 dated August 31, 1999, that the *prima facie* presumption that properties acquired during the marriage are conjugal cannot prevail over a court's specific finding reached in adversarial proceedings to the contrary. As found by both the trial court and respondent court in this case, not only did petitioners fail to overcome the presumption of conjugality of the disputed properly, private respondents have also presented sufficient evidence to support their allegation that the property was in fact purchased by Lucio with proceeds of the conjugal fund of his first marriage. This factual finding, which is clearly borne out by the evidence on record, is binding and conclusive upon the Court and will not be disturbed.

2. **ID.; ID.; ID.; ID.; PROPERTY ACQUIRED BY A MAN WHILE LIVING WITH A COMMON-LAW WIFE DURING SUBSISTENCE OF HIS MARRIAGE, PRESUMED CONJUGAL; CONSTRUCTIVE TRUST DEEMED CREATED BY DESIGNATION OF COMMON-LAW WIFE AS CO-OWNER; CASE AT BAR.** — The Court cannot agree with petitioners' bare and expedient assertion that, because the title to the property was registered in the name of both Lucio and Vicenta, she should thereby be deemed owner to half of it. A certificate of title under the Torrens system is aimed to protect dominion, and should certainly not be turned into an instrument for deprivation of ownership. Because a just and complete resolution of this case could only be arrived at by determining the real ownership of the contested property, evidence apart from or contrary to the certificate of title bears considerable importance. This assumes peculiar force in the instant situation where the heirs of a lawful pre-existing marriage stand to be deprived. Thus, in *Belcodero vs. Court of Appeals*, G.R. No. 132803 dated August 31, 1999, the Court held that property acquired by a man while living with a common-law

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wife during the subsistence of his marriage is conjugal property, even when the property was titled in the name of the common-law wife. In such cases, a constructive trust is deemed to have been created by operation of Article 1456 of the Civil Code over the property which lawfully pertains to the conjugal partnership of the subsisting marriage. ARTICLE 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law considered a trustee of an implied trust for the benefits of the person from whom the property comes. In Vicenta's case, it is clear that her designation as a co-owner of the property in TCT No. T-56553 is a mistake which needs to be rectified by the application of the foregoing provisions of Article 1456 and the ruling in *Belcodero.* The principle that a trustee who takes a Torrens title in his or her name cannot repudiate the trust by relying on the registration, is a well-known exception to the principle of conclusiveness of a certificate of title.

3. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; ORIGINAL CERTIFICATE OF TITLE NOT ADMISSIBLE AS EVIDENCE OF THE CONTENTS OF THE DEED OF SALE; PURPOSE THEREOF.** — The entry in OCT No. 0-9198 of the Deed of Sale bears no weight in proving Vicenta's supposed co-ownership, applying petitioners' own argument that the document itself, the Deed of Sale in the instant case, is the best evidence of its contents. The memorandum in the Original Certificate of Title (OCT) is not admissible as evidence of the contents of said Deed of Sale, but only of the fact of its execution, its presentation for notation, and its actual notation for purposes of constructive notice to the public of the preferential rights created and affecting that property.

APPEARANCES OF COUNSEL

Alfredo I Raya for petitioner.
Gilbert D. Gamaligan for private respondents.

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DECISION

GONZAGA-REYES, *J.*:

Petition for review on *certiorari* of the Decision of the Court of Appeals, Second Division,[1] affirming *in toto* the Joint Order of the Regional Trial Court of Lucena City, Branch 55,[2] which dismissed Civil Case No. 88-115 for annulment of will and ordered the disposition of the estate of Lucio Adriano in accordance with the provisions of his last will and testament in Spec. Proc. No. 4442.

The pertinent facts are as follows:

The testator, Lucio Adriano, also known as Ambrocio Adriano, married Gliceria Dorado on October 29, 1933. Out of their lawful marriage, they had three children, namely, Celestina, Manolo, and Aida, private respondents in this case. Sometime in 1942 or prior thereto, Lucio and Gliceria separated, and Gliceria settled in Rizal, Laguna where she died on June 11, 1968. Also in 1942 or even earlier, Lucio cohabited with Vicenta Villa, with whom he had eight children: Marino, Renato, Leticia, Imelda, Maria Alicia, Ligaya, Jose Vergel, and Zenaida, all surnamed Adriano. All his children by Vicenta Villa are the named petitioners in the instant case, with the exception of Jose Vergel, who died before the inception of the proceedings.

On November 22, 1968, or five months after the death of Gliceria, Lucio married Vicenta. Lucio and Vicenta and their children lived in Candelaria, Quezon until the spouses separated in 1972.[3]

On October 10, 1980, Lucio executed a last will and testament disposing of all his properties, and assigning, among others, his

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[1] Written by Associate Justice Jainal D. Rasul, and concurred in by Associate Justices Fidel P. Purisima (Chairman) and Eubulo G. Verzola.

[2] Presided by Judge Eleuterio F. Guerrero.

[3] RTC Order; *Rollo*, 103-104.

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second wife Vicenta and all his children by his first and second marriages as devisees and legatees therein. Among the properties bequeathed in the will were a 45,000 square meter lot and the residential house, rice mill, warehouse and equipment situated thereon located in Candelaria, Quezon and registered under Transfer Certificate of Title ("TCT") No. T-56553 in the Registry of Deeds of Quezon,[4] which was disposed of in the following manner: (1) to private respondents, Lucio's children by his first wife, 10,000 square meters of the disputed property, including the warehouse, rice mill, and equipment situated thereon; (2) to Vicenta and petitioners, his children by his second marriage, the remaining 35,000 square meters; and (3) to private respondents, the residential house also within the same property.[5]

On February 11, 1981, Lucio died and private respondent Celestina Adriano, who was instituted in Lucio's will as its executrix, filed a petition for the probate of the will on February 18, 1981 before the RTC of Lucena City. The probate case was docketed as Spec. Proc. No. 4442. After due hearing and despite the Opposition filed by Vicenta, the RTC allowed the probate of the will and directed the issuance of letters testamentary to petitioner-executrix Celestina Adriano in an Order dated August 22, 1983. On November 10, 1983, Vicenta appealed said Order to the then Intermediate Appellate Court, which in turn affirmed the probate of the will. Vicenta died on July 2, 1985.[6]

On August 17, 1988, and while the proceedings for settlement of estate were pending before the RTC, petitioners instituted an action for annulment of Lucio Adriano's will which was docketed as Civil Case No. 88-115. In the complaint, plaintiffs-petitioners alleged that before the marriage of Lucio and their mother, Vicenta, on November 22, 1968, the two lived together as husband and wife and as such, acquired properties which became the subject of inventory and administration in Spec.

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[4] Exhibit "P"; Folder of Exhibits, 17.

[5] Paragraph 2 of the Last Will and Testament of Lucio Adriano; Records of the Case, 5-6.

[6] Joint Stipulation of facts and Issues; Records of the Case, 85.

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Proc. No. 4442. Plaintiffs claimed that the properties bequeathed in Lucio's will are undivided "civil partnership and/or conjugal properties of Lucio Adriano and Vicenta Villa," and thus, the will sought to be probated should be declared void and ineffective insofar as it disposes of the rightful share or properties of Vicenta.[7]

It is also not disputed that the contested properties in Civil Case No. 88-115 and Spec. Proc. No. 4442 were also the subject of a complaint filed sometime in 1980 by Vicenta against Lucio, docketed with the then Court of First Instance of Quezon, Lucena City, Branch II as Civil Case No. 7534, wherein Vicenta sought the provisional partition or separation of the properties *pendente lite*. The case was dismissed on January 28, 1991 without prejudice, for lack of interest.

Spec. Proc. No. 4442 and Civil Case No. 88-115 were consolidated and jointly heard by the RTC.

The trial court favored the evidence of private respondents, which indicated that the purchase money for the contested properties came from the earnings of Lucio in a business partnership that he entered into in 1947, or during the subsistence of his marriage to Gliceria. The trial court further found that Lucio's initial capital infusion of ₱15,000.00 in the business partnership was in fact obtained from the conjugal fund of his first marriage. The evidence of private respondents is thus summarized by the trial court:

> Defendants' evidence, on the other hand, tends to show that the original common fund of Lucio (Ambrocio) Adriano in the amount of ₱15,000.00 was invested by Lucio Adriano in a partnership called the "Central Rice Mill & Co." which was formed and organized on November 30, 1947. Such initial investment came from the savings of Lucio Adriano and Gliceria Dorado before World War II, which was earned by said spouses by means of ambulant peddling of betel nuts and ikmo leaves and, subsequently, by the selling of (a) variety (of) goods and rice retailing at a market stall which they acquired at the public market of Candelaria, Quezon. On these savings, spouses

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[7] Complaint; Records of the Case, 3.

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Lucio Adriano and Gliceria Dorado added the proceeds of the sale of a "Fairbanks" rice mill made during the Japanese occupation, sometime between the years 1943 and 1944. The same rice mill was then located at the south end of Gonzales Street near the public market of Candelaria, Quezon, and was acquired by the same spouses through their joint efforts and industry made from the time of their marriage in 1933.

It is likewise shown by defendants' evidence that on January 8, 1951, the Articles of Co-Partnership of "Central Rice Mill & Co." was amended and its name was changed to "Quezon Central Rice Mill & Co." Lucio Adriano then made a new investment into the partnership out of savings from the conjugal partnership with Gliceria Dorado for the period 1947 until 1950 in the amount of ₱18,750.00 (Exhibit "1-A") thereby increasing his investment to ₱33,750.00 (par. 7(c) of Amended Articles of Co-Partnership, Exhibit "1-A"). On January 22, 1952, another partnership called "The Lessee of the Quezon Central Rice Mill" as formed by Lucio (Ambrocio) Adriano and four (4) partners and he invested the amount of ₱25,000.00 (Exhibit "2") thereby making his total capital investment reach the amount of ₱58,750.00.

On May 3, 1952, Lucio Adriano bought the share of Tan Kim *alias* "Joaquin Tan," a partner who withdrew from the partnership of the Quezon Central Rice Mill & Co. and who, in consideration of the sum of ₱34,342.55, executed a Deed of Sale and Mortgage (Exhibit "3") in favor of Lucio Adriano covering his proportional share in the properties of the partnership consisting of two (2) rice mills, two (2) diesel engines and *a camarin*, which are situated at Candelaria, Quezon. Lucio Adriano declared these properties in his name for taxation purposes under TCT Property Index No. 22-11-01-043-B (Exhibit "4") and Tax Declaration No. 564 (Exhibit "5").

All in all, the withdrawals made out of the savings of the conjugal partnership of Lucio Adriano and his wife, Gliceria Dorado, are the following:

1. Upon signing of the contract of sale and mortgage (Exhibit "3"), Lucio Adriano paid the sum of ₱10,342.45 and the balance of ₱24,000.00, as reflected in the statement of account of Tan Kim as receivables from Lucio Adriano (Exhibit "6") were settled on subsequent dates;

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2. Original copy of a receipt dated May 3, 1953 (Exhibit "7") covering expenses of registration of Exhibit "3" in the sum of ₱160.00;

3. Handwritten list of registration expenses (Exhibit "8"); and

4. Originals of receipts covering amounts paid by Lucio Adriano to Tan Kim on various dates from June 3, 1953 (Exhibits "9" to "20", inclusive) in the aggregate sum of ₱24,492.15.

It likewise appears from the evidence of the defendants that by the end of 1953, the total capital investment of Lucio Adriano taken from his conjugal partnership with his first wife, Gliceria Dorado, reached the amount of ₱94,744.88. In the late part of 1954, however, the same partnership was dissolved by means of a verbal agreement reached by Lucio Adriano and his partners and this resulted to an equal division of the partnership properties with the left portion thereof going to Tan Kang and Tan Giam and the right portion, to Lucio Adriano and Francisco Ramirez. Furthermore, by the end of 1955, Francisco Ramirez withdrew his share totalling ₱16,250.00 in favor of Lucio Adriano, who acquired the same, and from that time on, the latter became the sole owner of the rice mill which he later registered as the "Adriano Central Rice Mill." When the partnership was finally dissolved in 1955, the total capital investment of Lucio Adriano therein was ₱110,994.88, consisting of the fruit or income of his common fund with Gliceria Dorado, which was cumulatively used in the acquisition of other properties listed in the Inventory submitted to this Court by the administratrix and defendant, Celestina Adriano de Arcilla on February 19, 1987.[8]

The decretal portion of the Order dated May 8, 1991 issued by the RTC of Lucena City reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Civil Case No. 88-115, this Court finds and so holds that no cogent reasons or grounds exist to affect adversely, if not nullify, the testamentary dispositions and provisions contained in the Last Will and Testament of the late Lucio (Ambrocio) Adriano. Accordingly, the complaint filed in

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[8] RTC Order; *Rollo*, 104-106.

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this case is hereby ordered dismissed with costs against plaintiffs.

In like manner, the counterclaim is hereby ordered dismissed.

2. In Spec. Proc. No. 4442, it is hereby ordered that the settlement, liquidation, and partitioning of the estate of the late Lucio (Ambrocio) Adriano, more particularly the delivery of the respective shares of his heirs, the plaintiffs and defendants, be effected and implemented in accordance with the testamentary provisions set forth in the Last Will and Testament of the testator, Lucio (Ambrocio) Adriano.

SO ORDERED.[9]

The Court of Appeals dismissed petitioners' appeal for lack of merit, and affirmed *in toto* the Joint Order of the RTC of Lucena City.

As elevated before us, the petition takes issue only in respect of the property covered by TCT No. T-56553. Petitioners insist that it was erroneous of respondent court not to have upheld the co-ownership of Vicenta to 1/2 of said property, and to have declared the entire property as belonging to the conjugal partnership of Lucio and Gliceria. The petition essentially relies on the following grounds: (1) TCT No. T-56553, issued to "Spouses, LUCIO ADRIANO and VICENTA VILLA,"[10] constitutes conclusive and indefeasible evidence of Vicenta's co-ownership in the property,[11] and (2) the Deed of Sale dated March 15, 1964, as annotated in OCT No. O-9198,[12] the mother title of TCT No. T-56553, designates Vicenta Villa as a co-vendee. Petitioners maintain that the Deed of Sale, being the "best evidence" of the contents thereof, proves Vicenta's co-ownership in the land.

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[9] RTC Order; *Rollo*, 112.

[10] Exhibit "P", *op. cit.*, note 4.

[11] Citing *Sinoan vs. Sorongan,* 136 SCRA 407; *Centeno vs. Court of Appeals*, 139 SCRA 545; *Umbay vs. Alecha*, 135 SCRA 427.

[12] Exhibit "FF"; Folder of Exhibits, 66-67.

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We see no reason to reverse respondent court. Petitioners' insistence that a co-ownership of properties existed between Lucio and Vicenta during their period of cohabitation before their marriage in 1968 is without lawful basis considering that Lucio's marriage with Gliceria was then subsisting. The co-ownership in Article 144 of the Civil Code [13] requires that the man and woman living together as husband and wife without the benefit of marriage must not in any way be incapacitated to marry.[14] Considering that the property was acquired in 1964, or while Lucio's marriage with Gliceria subsisted, such property is presumed to be conjugal unless it be proved that it pertains exclusively to the husband or to the wife.[15] Thus, we ruled in *Pisueña vs. Heirs of Petra Unating and Aquilino Villar*[16] that the *prima facie* presumption that properties acquired during the marriage are conjugal cannot prevail over a court's specific finding reached in adversarial proceedings to the contrary.

As found by both the trial court and respondent court in this case, not only did petitioners fail to overcome the presumption of conjugality of the disputed property, private respondents have also presented sufficient evidence to support their allegation that the property was in fact purchased by Lucio with proceeds of the conjugal fund of his first marriage. This factual finding, which is clearly borne out by the evidence on record, is binding and conclusive upon us and will not be disturbed.

Although in cases of common-law relations where an impediment to marry exists, equity would dictate that property acquired by the man and woman through their joint endeavor

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[13] Article 144 of the Civil Code provides:

"When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules of co-ownership."

[14] *Belcodero vs. Court of Appeals,* 227 SCRA 303; *Juaniza vs. Jose,* 89 SCRA 306; *Camporedondo vs. Aznar*, 102 Phil. 1055; *Osmeña vs. Rodriguez*, 54 O.G. 5526; *Malijacan vs. Rubi*, 42 O.G. 5576.

[15] Civil Code, Art. 160.

[16] G.R. No. 132803 dated August 31, 1999, see p. 14.

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should be allocated to each of them in proportion to their respective efforts,[17] petitioners in the instant case have not submitted any evidence that Vicenta actually contributed to the acquisition of the property in question.

We cannot agree with petitioners' bare and expedient assertion that, because the title to the property was registered in the name of both Lucio and Vicenta, she should thereby be deemed owner to half of it. A certificate of title under the Torrens system is aimed to protect dominion, and should certainly not be turned into an instrument for deprivation of ownership.[18] Because a just and complete resolution of this case could only be arrived at by determining the real ownership of the contested property, evidence apart from or contrary to the certificate of title bears considerable importance.[19] This assumes peculiar force in the instant situation where the heirs of a lawful pre-existing marriage stand to be deprived. Thus, in *Belcodero vs. Court of Appeals*,[20] we held that property acquired by a man while living with a common-law wife during the subsistence of his marriage is conjugal property, even when the property was titled in the name of the common-law wife. In such cases, a constructive trust is deemed to have

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[17] The Family Code, which took effect on August 3, 1988, now clearly provides in cases of cohabitation where the common-law spouses suffer from legal impediment to marry:

Art. 148. xxx (O)nly the properties acquired by both of the parties through their actual joint contribution of money, property or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. xxx

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article (*i.e.*, in favor of their common children). xxx

[18] *Padilla vs. Padilla*, 74 Phil. 377.

[19] See *Padilla vs. Padilla*, *supra*, where the Court held that property recorded in the name of both husband and wife may be shown to be exclusive property of either spouse.

[20] *Supra*, note 16.

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been created by operation of Article 1456 of the Civil Code over the property which lawfully pertains to the conjugal partnership of the subsisting marriage.

Article 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

In Vicenta's case, it is clear that her designation as a co-owner of the property in TCT No. T-56553 is a mistake which needs to be rectified by the application of the foregoing provisions of Article 1456 and the ruling in *Belcodero*. The principle that a trustee who takes a Torrens title in his or her name cannot repudiate the trust by relying on the registration, is a well-known exception to the principle of conclusiveness of a certificate of title.[21]

On petitioners' second ground, we note that the Deed of Sale dated March 15, 1964 which purportedly designates Vicenta as a co-buyer of the property was not even presented in evidence. The entry in OCT No. 0-9198 of the Deed of Sale bears no weight in proving Vicenta's supposed co-ownership, applying petitioners' own argument that the document itself, the Deed of Sale in the instant case, is the best evidence of its contents. The memorandum in the OCT is not admissible as evidence of the contents of said Deed of Sale, but only of the fact of its execution, its presentation for notation, and its actual notation for purposes of constructive notice to the public of the preferential rights created and affecting that property.[22] Besides, even if said Deed of Sale was submitted in evidence, it still has no bearing because it could not be said to affect or bind third parties to the sale, such as private respondents herein.

WHEREFORE, the Decision in CA-G.R. CV No. 41509 is hereby *AFFIRMED*.

SO ORDERED.

Melo (Chairman), Vitug, and *Panganiban, JJ.*, concur.

Purisima, J., no part.

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[21] *Padilla vs. Padilla, supra; Severino vs. Severino*, 44 Phil. 343.

[22] *Philippine National Bank vs. Tan Ong Zse*, 51 Phil. 317.