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SECOND DIVISION

[G.R. No. 122249. January 29, 2004]

REYNALDO, TELESFORO, REMEDIOS, ALFREDO and BELEN, all surnamed AGUIRRE, VICENTA, HORACIO and FLORENCIO, all surnamed MAGTIBAY and LEONILA, CECILIA, ANTONIO, and VENANCIO, all surnamed MEDRANO, and ZOSIMA QUIAMBAO, *petitioners, vs.* **COURT OF APPEALS and ELIAS, JOSE, ARSENIA and ROGELIO, all surnamed BALITAAN, and MARIA ROSALES,** *respondents.*

SYNOPSIS

Petitioners herein demanded the reconveyance of portions of land sold by Sixto Medrano to Tiburcio Balitaan. After trial on the merits, the trial court rendered judgment ruling that private respondents did not dispute by any evidence the falsity of the affidavit of transfer as well as the fact that Sixto has co-owners to the property. It found that private respondents' affirmative defense of laches and/or prescription are unavailing against a property held in co-ownership as long as the state of co-ownership is recognized. Consequently, the trial court upheld the sale made by Sixto in favor of private respondents only to the extent that Sixto is entitled to by virtue of his being co-owner. The private respondents appealed to the Court of Appeals, which rendered a decision in their favor. The appellate court recognized the validity of the sale only with respect to the undivided share of Sixto as co-owner; but nonetheless, declared private respondents as absolute owners of the subject property. In this appeal before the Supreme Court, petitioners take exception from the appellate court's findings that the respondents had been in possession of the property in the concept of owner of the entire property sold to Tiburcio by Sixto for sixteen years, hence, acquired ownership of the whole property through ordinary prescription for ten years.

The Supreme Court agreed with the petitioners. After a careful examination of the records, the Court found that private

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respondents failed to discharge the burden of proof that Tiburcio was a purchaser in good faith. Not being in good faith, the ten-year period required for ordinary acquisitive prescription does not apply in this case. Even the thirty-year period under extraordinary acquisitive prescription has not been met since private respondents claim to have been in possession, in the concept of owner, of the entire parcel of land sold to Tiburcio by Sixto for only seventeen years. The Court also stated, as it had consistently held, that if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other owners who did not consent to the sale. The deed of sale executed herein by Sixto was a valid conveyance only insofar as the share of Sixto in the co-ownership was concerned. Thus, the respondent court erred in declaring the ownership of the entire 1,695-sqare meter property sold by Sixto in favor of private respondents. The petition was granted.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; APPEALS FROM THE COURT OF APPEALS TO THE SUPREME COURT; FINDINGS OF FACTS OF THE COURT OF APPEALS; CONCLUSIVE AND BINDING ON THE SUPREME COURT; EXCEPTIONS.—** It is settled that in the exercise of the Supreme Court's power of review, the findings of facts of the Court of Appeals are conclusive and binding on the Supreme Court. The exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not

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disputed by the parties, which, if properly considered, would justify a different conclusion.

2. **CIVIL LAW; PROPERTY; ORDINARY ACQUISITIVE PRESCRIPTION DISTINGUISHED FROM EXTRAORDINARY ACQUISITIVE PRESCRIPTION.**— Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law; without good faith and just title, acquisitive prescription can only be extraordinary in character. Regarding real or immovable property, ordinary acquisitive prescription requires a period of possession of ten years, while extraordinary acquisitive prescription requires an uninterrupted adverse possession of thirty years. Ordinary acquisitive prescription demands that possession be "in good faith," which consists in the reasonable belief that the person from whom the thing is received has been the owner thereof and could thereby transmit that ownership. There is "just title" when the adverse claimant comes into possession of the property through any of the modes recognized by law for the acquisition of ownership or other real rights, but that the grantor is neither the owner nor in a position to transmit the right.

3. **ID.; LACHES; DEFINED AND CONSTRUED.**— Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned it or declined to assert it. It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit. The rule that each co-owner may demand at any time the partition of the common property implies that an action to demand partition is imprescriptible or cannot be barred by laches.

4. **ID.; PROPERTY; CO-OWNERSHIP; SALE OR OTHER DISPOSITION AFFECTS ONLY THE UNDIVIDED SHARE OF THE CO-OWNER.**— We have consistently held that if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. Article 493 of the Civil Code provides: Art. 493. Each co-owner shall have the full ownership of his part and the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute

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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. It clearly provides that the sale or other disposition affects only the seller's share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void; only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property.

APPEARANCES OF COUNSEL

Juanito L. Garcia and *Eugenio E. Mendoza* for petitioners.
Jose P. Malabanan and *Lorenzo E. Leynes, Jr.* for private respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated July 26, 1995 rendered by the Court of Appeals in CA-G.R. CV No. 42350 which set aside the Decision[2] dated April 28, 1992 of the Regional Trial Court of Batangas City (Branch 2) in Civil Case No. 202,[3] and declared private respondents

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[1] Penned by Justice Jorge S. Imperial (now deceased) and concurred in by Justice Pacita Cañizares-Nye (now deceased) and Justice Romeo J. Callejo, Sr. (now Associate Justice of the Supreme Court), *Rollo*, pp. 32-46.

[2] Penned by Judge Ireneo V. Mendoza.

[3] Entitled, "*Reynaldo, Telesforo, Remedios, Alfredo and Belen all surnamed Aguirre, Vicenta, Horacio and Florencio all surnamed Magtibay, Leonila, Cecilia, Antonio and Venancio all surnamed Medrano and Zosima Quiambao vs. Tiburcio Balitaan, Maria Bacong and Rosendo Bacong*"

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Heirs of Tiburcio Balitaan, as owners of the parcel of unregistered land with an approximate area of 1,695 square meters, located at Aplaya, Bauan, Batangas.

The facts of the case are as follows:

In his lifetime, Leocadio Medrano was the owner and possessor of a parcel of residential land, situated in Aplaya, Bauan, Batangas, containing an area of 2,611 square meters.[4] The parcel of land was conjugal property, having been acquired by Leocadio during his first marriage with one Emiliana Narito. Their union begot four children, namely: (a) Gertrudes Medrano, now deceased, represented in this case by her children, herein petitioners Telesforo, Reynaldo, Remedios, Alfredo, and Belen, all surnamed Aguirre; (b) Isabel Medrano, likewise deceased, represented by her children, herein petitioners Vicenta, Horacio, and Florencio, all surnamed Magtibay; (c) Placido Medrano, also deceased, represented by his only child, herein petitioner Zosima Quiambao; and (d) Sixto Medrano.

After the death of his first wife, Leocadio contracted a second marriage with Miguela Cariño. Their union bore four children, herein co-petitioners, namely: Venancio, Leonila, Antonio and Cecilia, all surnamed Medrano.

Upon the death of Leocadio on March 19, 1945, the surviving heirs agreed that Sixto should manage and administer the subject property.

Sixto died on May 17, 1974. It was only after his death that petitioners heard rumors that Sixto had, in fact, sold significant portions of the estate of Leocadio. It appears that on September 7, 1953, Sixto, without the knowledge and consent of the petitioners, executed an Affidavit of Transfer of Real Property stating therein that he was the only heir of Leocadio.[5] Sixto

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[4] 1,791 square meters of which was declared in Tax Declaration No. 40105 while 820 square meters remained undeclared for taxation purposes until 1953 in Tax Declaration No. 44984 issued in the name of Sixto Medrano; Original Records, pp. 8, 10.

[5] *Id.*, p. 9.

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declared that Leocadio died on September 16, 1949, instead of the actual date of his death on March 19, 1945. With the use of said affidavit and a survey plan,[6] Tax Declaration No. 40105 in the name of Leocadio was cancelled and Tax Declaration No. 44984 was issued in the name of Sixto.[7] On August 29, 1957, Sixto sold to Maria Bacong a 160-square meter portion of the subject land.[8] On September 28, 1959, Sixto sold to Tiburcio Balitaan a 1,695 square meter portion of the same land.[9] Sometime in November 1967, Maria Bacong sold her property to Rosendo Bacong.[10]

Petitioners demanded the reconveyance of the portions sold by Sixto but Tiburcio Balitaan, Maria Bacong and Rosendo Bacong refused to do so. Hence, petitioners filed against them before the Regional Trial Court of Batangas (Branch 2), a complaint for Declaration of Nullity of Documents, Partition, Malicious Prosecution and Damages, docketed as Civil Case No. 202.[11]

In their Answer, Maria Bacong and Rosendo Bacong contend that petitioners have no cause of action because they acquired their property thru a valid deed of sale dated August 29, 1957, executed by Sixto and, alternatively, petitioners' cause of action, if any, was barred by prescription and laches.[12]

In his Answer, Tiburcio Balitaan contends that petitioners have no cause of action since petitioners were well-aware of

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[6] *Id.*, p. 11.

[7] *Id.*, p. 10.

[8] *Id.*, p. 16.

[9] *Id.*, pp. 14-15.

[10] *Id.*, p. 18.

[11] Entitled "*Reynaldo, Telesforo, Remedios, Alfredo and Belen all surnamed Aguirre, Vicenta, Horacio and Florencio all surnamed Magtibay, Leonila, Cecilia, Antonio and Venancio all surnamed Medrano and Zosima Quiambao vs. Tiburcio Balitaan, Maria Bacong and Rosendo Bacong,*" *Id.*, p. 1.

[12] *Id.*, pp. 28-29.

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the sale of the property to him by Sixto; and that he was an innocent purchaser for value, in possession and enjoyment of the land in the concept of absolute owner, peacefully and publicly. He further echoed the contention of Maria and Rosendo Bacong that any cause of action petitioners may have was barred by prescription and laches.[13]

Maria Bacong died during the pendency of the suit in the trial court and she was substituted by her surviving heirs, namely, Lorenza, Elena, Felipa, Manuel, Marilou, Ricardo, Medel, Monchito and Milag, all surnamed Medrano.[14] Tiburcio Balitaan also died and was substituted by his heirs, herein private respondents, namely: his wife, Maria Rosales and their four children: Elias, Jose, Arsenia and Rogelio, all surnamed Balitaan.[15]

On July 28, 1989, petitioners and Rosendo Bacong, for himself and as attorney-in-fact of the heirs of Maria Bacong, entered into a compromise agreement to settle the case between them.[16] The compromise agreement, as approved by the trial court, provided that Rosendo Bacong and the heirs of Maria Bacong agreed to pay ₱30,000.00 to petitioners in recognition of petitioners' ownership of a 269-square meter portion[17] and in consideration of which, petitioners recognized the full ownership, rights, interest and participation of the former over said land.[18] *The area of the subject land is thus reduced to 2,342 square meters (2,611 square meters minus 269 square meters).*

After trial on the merits, the trial court rendered judgment dated April 28, 1992, ruling that private respondents did not dispute, by any evidence, the falsity of the Affidavit of Transfer, as well as the fact that Sixto had co-owners to the property.

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[13] *Id.*, p. 32.

[14] *Id.*, p. 102.

[15] *Id.*, p. 254.

[16] *Id.*, p. 338.

[17] *Id.*, p. 520.

[18] *Id.*, p. 339.

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It found that private respondents' affirmative defense of laches and/or prescription are unavailing against a property held in co-ownership as long as the state of co-ownership is recognized. Consequently, the trial court upheld the sale made by Sixto in favor of private respondents only to the extent that Sixto is entitled to by virtue of his being a co-owner.[19]

In determining the area that Sixto could have validly sold to private respondents, the trial court, in its decision, provided for the manner of partition among the parties, based on the memorandum submitted by petitioners, thus:

For the four (4) children of the first marriage, namely:

(1) Gertrudes, who is already dead represented by her children Telesforo, Reynaldo, Remedios, Alfredo and Belen, all surnamed Aguirre — 399.42 square meters;
(2) Isabel Medrano, who is already dead, represented by the plaintiffs, her children Vicenta, Horacio and Florencio, all surnamed Magtibay — 399.42 square meters;
(3) Placido Medrano (dead), represented by his only child Zosima Medrano — 399.42 square meters; and
(4) *Sixto Medrano — 399.42 square meters only which he had the right to dispose of in favor of Tiburcio Balitaan and Maria Rosales.*

The above consist of undivided interest, shares and participations from the inheritance or succession to the conjugal estate of Leocadio Medrano and Emiliana Narito.

For the children of the second marriage their shares in the inheritance from the property of Leocadio Medrano are as follows:

(1) To Venancio Medrano — 138.32 square meters
(2) To Leonila Medrano — 138.32 square meters
(3) To Antonio Medrano — 138.32 square meters
(4) To Cecilia Medrano — 138.32 square meters

with all the above consisting of undivided shares, interest and participation in the estate.

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[19] *Rollo*, pp. 66-74.

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For the defendants Maria Rosales, surviving spouse of the deceased Tiburcio Balitaan and their Children, an area of 399.42 square meters, the only area and extent which Sixto Medrano could have legally dispensed of in their favor.[20]

Thus, the dispositive portion of the trial court's decision reads as follows:

WHEREFORE, in view of the foregoing, the Court renders judgment in favor of the plaintiffs and against the defendants, to wit:

(a) Ordering the partition of the property in question among the plaintiffs and the defendants; and

(b) Ordering the parties, plaintiffs and defendants, to make a partition among themselves by proper instruments of conveyance and to submit before this Court a project of partition should the parties be able to agree for the confirmation of the Court within two (2) months upon receipt of this decision, otherwise this Court will be constrained to appoint commissioners to make the partition in accordance with law.

All other claims not having been duly proved are ordered dismissed.

SO ORDERED.[21]

Aggrieved, private respondents appealed to the Court of Appeals.[22]

On July 26, 1995, the appellate court rendered judgment recognizing the validity of the sale only with respect to the undivided share of Sixto Medrano as co-owner; but nonetheless, declaring respondents as absolute owners of 1,695 square meters of the subject property, reasoning that:

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[20] *Id.*, pp. 72-73.

[21] *Id.*, pp. 73-74.

[22] *Id.*, pp. 75-120. Private respondents initially filed a Notice of Appeal with the trial court which the latter denied on the ground that "the decision promulgated on April 28, 1992 is not yet final and executory considering that there are still many things to be done". On petition for *mandamus* with the Court of Appeals (CA-G.R. SP No. 30446), the Court of Appeals granted the petition and directed the trial court to give due course to private respondents' appeal. (Court of Appeals' *Rollo*, p. 89)

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. . . Defendants-appellees have been in possession, in the concept of owner, of the entire parcel of land sold to Tiburcio Balitaan by Sixto Medrano for more than ten years, seventeen years to be exact (1958-1975). Relying on the affidavit of transfer (Exhibit "B") the tax declaration (Exhibit "C") and the survey plan (Exhibit "D") shown to him by Sixto Medrano which indicate the latter as owner of the property in dispute, Tiburcio Balitaan believed transfer to him was effected. (TSN, April 17, 1991, pp. 14-17) and thus, entered the property as owner (*Ibid.* at p. 13) Tiburcio Balitaan, believing himself as the lawful transferee, in addition, caused Tax Declaration No. 51038 to be issued in his name (Exhibits "6", "6-A", "6-B", and "6-C"). Thus, although the sale of the co-owned property is only valid as to the undivided share of Sixto Medrano, defendants, by virtue of their open, adverse and uninterrupted possession from 1958 (Exhibit "G") to 1975, obtained title to the entire property and not just Sixto's undivided share. This is pursuant to Article 1134 (1957a) of the New Civil Code which provides that:

> Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

. . . . . .

Plaintiffs did not at all inquire as to the status of their property all this time and thus have been remiss of their duties as owners of the property. Plaintiffs waited until Sixto's death to learn more about their property. Even though the co-ownership is to be preserved in accordance with the wishes of the deceased, the plaintiffs should have taken it upon themselves to look into the status of the property once in a while, to assure themselves that it is managed well and that they are receiving what is due them as co-owners of the parcel of land or to at least manifest their continued interest in the property as normal owners would do. But the plaintiffs did not show any interest in the way Sixto Medrano was managing the property which in effect gave the latter *carte blanche* powers over the same. Such passivity is aggravated by the fact that one of the plaintiffs resides a mere 600 meters away from the disputed property (TSN, April 17, 1991, p. 13). By not showing any interest, the plaintiffs have, in fact, slept on their rights and thus, cannot now exercise a stale right.[23]

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[23] *Rollo*, pp. 40-42.

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Petitioners sought reconsideration[24] but the appellate court denied it in a Resolution dated October 5, 1995.[25]

In their present recourse, petitioners take exception from the appellate court's findings that respondents have been in possession, in the concept of owner of the entire parcel of land sold to Tiburcio Balitaan by Sixto Medrano for seventeen years (1958-1975), relying on the Affidavit of Transfer and Tax Declaration No. 51038 in the name of Sixto; and that Tiburcio acquired ownership of the whole property from Sixto through ordinary prescription for ten years.

Petitioners submit that Tiburcio Balitaan was not a purchaser in good faith and for value since there are enough circumstances which should have put him on guard and prompted him to be more circumspect and inquire further about the true status of Sixto Medrano's ownership; that during his lifetime, Tiburcio was a neighbor of petitioners and was well-aware that Sixto had other siblings but Tiburcio chose to rely on the Affidavit of Transfer executed by Sixto Medrano declaring that he was the only heir of Leocadio; that the Court of Appeals should not have faulted them for failing to inquire about the status of the disputed property until after the death of Sixto Medrano; that they are not guilty of laches.

It is settled that in the exercise of the Supreme Court's power of review, the findings of facts of the Court of Appeals are conclusive and binding on the Supreme Court.[26] The exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is

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[24] *Id.*, pp. 47-65.

[25] *Id.*, p. 30.

[26] *Pestario vs. Sumayang*, 346 SCRA 870, 878 (2000); *Bañas, Jr. vs. Court of Appeals*, 325 SCRA 259, 271 (2000); *Borromeo vs. Sun*, 317 SCRA 176, 182 (1999); *Lagrosa vs. Court of Appeals*, 312 SCRA 298, 310 (1999); *Security Bank and Trust Company vs. Triumph Lumber and Construction Corporation*, 301 SCRA 537, 548 (1999).

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based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[27] Exceptions (4), (7), (10) and (11) are present in the instant case.

We find the petition meritorious.[28] We agree with the petitioners that the Court of Appeals committed a reversible error in upholding the claim of petitioners that they acquired ownership of the subject property through prescription.

Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law;[29] without good faith and just title, acquisitive prescription can only be extraordinary in character. Regarding real or immovable property, ordinary acquisitive prescription requires a period of possession of ten years,[30] while extraordinary

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[27] *Langkaan Realty Development, Inc. vs. United Coconut Planters Bank*, 347 SCRA 542, 549 (2000). *Nokom vs. National Labor Relations Commission*, 336 SCRA 97, 110 (2000); *Commissioner of Internal Revenue vs. Embroidery and Garments Industries (Phil.), Inc.*, 305 SCRA 70, 74 (1999); *Sta. Maria vs. Court of Appeals*, 285 SCRA 351, 357 (1998).

[28] Original Records of Civil Case No. 42350 were received by the Court only on September 4, 2003.

[29] Article 1117, Civil Code.

[30] Article 1134, Civil Code.

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acquisitive prescription requires an uninterrupted adverse possession of thirty years.[31]

Ordinary acquisitive prescription demands that possession be "in good faith," which consists in the reasonable belief that the person from whom the thing is received has been the owner thereof and could thereby transmit that ownership.[32] There is "just title" when the adverse claimant comes into possession of the property through any of the modes recognized by law for the acquisition of ownership or other real rights, but that the grantor is neither the owner nor in a position to transmit the right.[33]

Article 1130 of the Civil Code states that the "title for prescription must be true and valid." In *Doliendo vs. Biarnesa*,[34] we elucidated on this provision, thus:

> We think that this contention is based on a misconception of the scope and effect of the provisions of this article of the Code in its application to "ordinary prescription." It is evident that by a "*titulo verdadero y valido*" in this connection we are not to understand a "*titulo que por si solo tiene fuerza de transferir el dominio sin necesidad de la prescricion*" (a title which of itself is sufficient to transfer the ownership without the necessity of the lapse of the prescription period); and we accept the opinion of a learned Spanish law writer who holds that the "*titulo verdadero y valido*" as used in this article of the code prescribes a "*titulo Colorado*" and not merely "*putativo*"; a "*titulo* Colorado" being one 'which a person has when he buys a thing, in good faith, from one whom he believes to be the owner,' and a "*titulo putativo*" "being one which is supposed to have preceded the acquisition of a thing, although in fact it did not, as might happen when one is in possession of a thing in the belief that it had been bequeathed to him." (*Viso Derecho Civil, Parte Segunda,* p. 541)[35]

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[31] Article 1137, Civil Code.

[32] Article 1127, Civil Code.

[33] Article 1129, Civil Code.

[34] 7 Phil. 232 (1906).

[35] *Id.*, p. 234.

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The requirements for ordinary acquisitive prescription as hereinabove described have not been met in this case.

It must be remembered that the burden of proving the status of a purchaser in good faith lies upon him who asserts that status. It is not sufficient to invoke the ordinary presumption of good faith, that is, that everyone is presumed to have acted in good faith, since the good faith that is here essential is integral with the very status that must be established.[36]

After a careful examination of the records, we find that private respondents failed to discharge the burden of proof that Tiburcio Balitaan was a purchaser in good faith. It is undisputed that Tiburcio practically lived his entire lifetime in the area where the property in dispute is located and had been a neighbor of petitioners. He knew that Sixto Medrano had other siblings because his son, Dr. Elias Balitaan, is the godson by baptism of spouses Jose Aguirre and Gertrudes Medrano, the latter being a deceased sister of Sixto. Thus, Tiburcio was not a complete stranger to the Medrano clan. Yet, he deliberately chose to close his eyes to said facts and despite his personal knowledge to the contrary, he purchased the disputed property from Sixto on the basis of the misrepresentation of the latter in his Affidavit of Transfer that he is the sole surviving heir of Leocadio. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.[37]

Since the disputed property is an unregistered land, Tiburcio as buyer thereof did so at his peril. Private respondents' claim that Tiburcio bought the land in good faith, that is, without notice that some other person has a right to or interest in the property, would not protect them if it turns out, as it actually did in this case, that the seller, Sixto Medrano, did not own the entire

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[36] *Embrado vs. Court of Appeals*, 233 SCRA 335, 344 (1994).

[37] *Development Bank of the Philippines vs. Court of Appeals*, 331 SCRA 267, 290 (2000); *Lucena vs. Court of Appeals*, 313 SCRA 47, 57 (1999).

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property at the time of the sale, but only an undivided portion of the land as a co-owner. Private respondents failed to show that the petitioners were notified of the subject sale or that respondents gave their consent to the sale. Not being in "good faith," the ten-year period required for ordinary acquisitive prescription does not apply.

Even the thirty-year period under extraordinary acquisitive prescription has not been met in this case. Private respondents claim to have been in possession, in the concept of owner, of the entire parcel of land sold to Tiburcio Balitaan by Sixto Medrano for only seventeen years (1958-1975).

In addition, as we have enunciated in *Salvador vs. Court of Appeals*,[38] to wit:

> This Court has held that the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them. *Acts which may be considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. A mere silent possession by a co-owner, his receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership*, if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocably constituted an ouster or deprivation of the rights of the other co-owners.
>
> Thus, in order that a co-owner's possession may be deemed adverse to the *cestui que* trust or the other co-owners, the following elements must concur: *(1) that he has performed unequivocal acts of repudiation amounting to an ouster of the* ***cestui que trust*** *or the other co-owners; (2) that such positive acts of repudiation have been made known to the* ***cestui que trust*** *or the other co-owners; and (3) that the evidence thereon must be clear and convincing.*[39] (Emphasis and italics supplied)

Tested against these guidelines, respondents failed to present competent evidence that the acts of Sixto adversely and clearly

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[38] 243 SCRA 239 (1995).

[39] *Id.*, p. 251.

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repudiated the existing co-ownership among the heirs of Leocadio Medrano.

Private respondents' reliance on the tax declaration in the name of Sixto Medrano is unworthy of credit since we have held on several occasions that tax declarations by themselves do not conclusively prove title to land.[40] Further, private respondents failed to show that the Affidavit executed by Sixto to the effect that he is the sole owner of the subject property was known or made known to the other co-heirs of Leocadio Medrano.

Neither can we subscribe to the appellate court's view that petitioners are guilty of laches. Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned it or declined to assert it.[41] It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit.[42] The rule that each co-owner may demand at any time the partition of the common property implies that an action to demand partition is imprescriptible or cannot be barred by laches.[43]

We have consistently held that if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale.[44] Article 493 of the Civil Code provides:

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[40] *Hemedes vs. Court of Appeals*, 316 SCRA 347, 370 (1999); *Heirs of Leopoldo Vencilao, Sr. vs. Court of Appeals*, 288 SCRA 574, 581 (1998); *Titong vs. Court of Appeals (4th Division)*, 287 SCRA 102, 115 (1998).

[41] *Ignacio vs. Basilio*, 366 SCRA 15, 23 (2001); *Lim Tay vs. Court of Appeals*, 293 SCRA 634, 659 (1998).

[42] *Philippine Bank of Communications vs. Court of Appeals*, 289 SCRA 178, 186 (1998).

[43] *Deiparine vs. Court of Appeals*, 299 SCRA 668, 679 (1998); *Sandoval vs. Court of Appeals*, 243 SCRA 239, 250 (1995).

[44] *Tomas Claudio Memorial College, Inc. vs. Court of Appeals*, 316 SCRA 502, 509 (1999); *Bailon-Casilao vs. Court of Appeals*, 160 SCRA 738, 746 (1988).

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Art. 493. Each co-owner shall have the full ownership of his part and 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.

It clearly provides that the sale or other disposition affects only the seller's share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void; only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property.[45] Accordingly, we held in *Bailon-Casilao vs. Court of Appeals:*

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one-co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.

The proper action in cases like this is not for the nullification of the sale or for the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it [*Mainit v. Bandoy, supra*].

Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court. Neither recovery of possession nor restitution can be granted since the defendant buyers are legitimate proprietors and possessors in joint ownership of the common property claimed [*Ramirez v. Bautista, supra*].[46]

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[45] *Fernandez vs. Fernandez*, 363 SCRA 811, 829 (2001).

[46] *Supra*, Note 44 at p. 745.

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It is clear therefore that the deed of sale executed by Sixto Medrano in favor of Tiburcio Balitaan is a valid conveyance only insofar as the share of Sixto Medrano in the co-ownership is concerned. Thus, the respondent court erred in declaring the ownership of the entire 1,695-square meter property sold by Sixto, in favor of the private respondents.

The next question is what is the area of the *pro indiviso* share pertaining to Sixto Medrano that was sold to private respondents? The trial court endeavored to determine the same by ascertaining the inheritance of each of the heirs of Leocadio. However, the manner of partition as set out by the trial court in the text of its decision needs to be amended so as to conform to the laws on intestate succession under the Old Civil Code absent any allegation or showing that Leocadio left any last will and testament.

It is not disputed that the 2,342-square meter property was a conjugal property of Leocadio and Emiliana. Upon the death of Emiliana, which occurred many years before the death of Leocadio in 1945, both deaths occurring before the enactment of the New Civil Code in 1950, all the four children of the first marriage and the four children of the second marriage shall share equally. The subject property should have been divided into eight equal parts, pursuant to Articles 921 and 931 of the old Civil Code,[47] or 292.75 square meters each. The respective heirs of the now deceased children of Leocadio inherit by way

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[47] Art. 921. In every inheritance the relative nearest in degree excludes the one more remote, except in cases in which the right of representation exists.

Relatives in the same degree shall inherit in equal portions, subject to the provisions of Article 949 with respect to relationship by the whole blood.

Art. 931. Legitimate children and their descendants succeed the parents and other ascendants, without distinction of sex or age, even though they spring from different marriages.

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of representation the respective shares of their respective parents, pursuant to Articles 933 and 934 of the Old Civil Code.[48]

At the time of death of Leocadio in 1945, Miguela was entitled only to the usufruct of the land pursuant to Article 834 of the Old Civil Code,[49] which provides that "[i]f only one legitimate child or descendant survives, the widower or widow shall have the usufruct of the third available for betterment, such child or descendant to have the naked ownership until, on the death of the surviving spouse, the whole title is merged in him."

Thus, to recapitulate, each of the heirs of Leocadio should inherit 292.75 square meters, *pro-indiviso* (2,342 square meters ÷ 8 = 292.75 square meters) after deducting from the original 2,611 square meters of the subject property the 269 square meters ceded to the heirs of Maria Bacong in a compromise agreement among the petitioners and the heirs of Maria Bacong. The deceased children of Leocadio are represented by their respective heirs by right of representation under Articles 933 and 934 of the Old Civil Code.

Accordingly, the undivided shares of Leocadio's eight children or their heirs by right of representation, upon the death of Leocadio in 1945 are as follows:

(1)	Venancio Medrano	- 292.75 square meters
(2)	Leonila Medrano	- 292.75 square meters
(3)	Antonio Medrano	- 292.75 square meters
(4)	Cecilia Medrano	- 292.75 square meters

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[48] Art. 933. The grandchildren and other descendants shall inherit by right or representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions.

Art. 934. Should children and descendants of other deceased children survive, the former shall inherit in their own right, and the latter by right of representation.

[49] NOW ART. 996 of the New Civil Code. [a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children].

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(5)	Heirs of Gertrudes M. Aguirre, Telesforo, Reynaldo, Remedios, Alfredo and Belen, all surnamed Aguirre	- 292.75 square meters
(6)	Heirs of Isabel M. Magtibay, Vicenta, Horacio and Florencio, all surnamed Magtibay	- 292.75 square meters
(7)	Heirs of Placido Medrano, plaintiff Zosima Medrano Quimbao	- 292.75 square meters
(8)	*Sixto Medrano*	- *292.75 square meters*

During the pendency of the case in the trial court but after the death of Sixto, petitioners sold 460 square meters to one Mateo Castillo. Consequently, the 460 square meters should be charged against the shares of petitioners only and should not affect the 292.75 square meters undivided share of Sixto Medrano which he had sold in 1959.[50] Accordingly, 460 square meters divided by 7 equals 65.71 square meters. Deducting said area from 292.75 square meters, the final undivided share of each of the seven heirs of Leocadio should be 227.04 square meters (292.75 - 65.71 = 227.04) and that pertaining to Sixto in 292.75 square meters.

Thus, the manner of partition set forth by the trial court in its decision should be amended, as follows:

(1)	Gertrudes M. Aguirre,deceased, represented by her children, herein petitioners Telesforo, Reynaldo, Remedios, Alfredo and Belen, all surnamed Aguirre	- 227.04 square meters
(2)	Isabel M. Magtibay, deceased, represented by her children, herein petitioners Vicenta, Horacio and Florencio, all surnamed Magtibay	- 227.04 square meters

[50] *Rollo*, pp. 523, 524.

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(3)	Placido Medrano, deceased, represented by his only child, Placido Medrano	- 227.04 square meters
(4)	*Private respondents Maria Rosales and heirs of Tiburcio Balitaan, namely: Elias, Jose, Arsenia and Rogelio all surnamed Balitaan (in lieu of Sixto Medrano)*	- *292.75 square meters*
(5)	Venancio Medrano	- 227.04 square meters
(6)	Leonila Medrano	- 227.04 square meters
(7)	Antonio Medrano	- 227.04 square meters
(8)	Cecilia Medrano	- 227.04 square meters
(9)	Rosendo Bacong	- 269 square meters
(10)	Mateo Castillo	- 460 square meters

WHEREFORE, we *GRANT* the petition. The assailed decision of the Court of Appeals in CA-G.R. CV No. 42350, dated July 26, 1995, is *REVERSED* and *SET ASIDE*. The decision of the Regional Trial Court is REINSTATED with the following MODIFICATIONS:

The sale in favor of private respondents is declared VALID but only insofar as the 292.75 square meters undivided share of Sixto Medrano in the subject property is concerned.

Let the parcel of land, located at Aplaya, Bauan, Batangas, consisting of 2,611 square meters, be partitioned and distributed as determined by the Court in the text of herein decision. Accordingly, let the records of the case be remanded to the Regional Trial Court of Batangas City (Branch 2) in Civil Case No. 202 for further appropriate proceedings under Rule 69 of the Rules of Court.

No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), Quisumbing, Callejo, Sr., and *Tinga, JJ.*, concur.