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THIRD DIVISION

[G.R. No. 159578. July 28, 2008]

ROGELIA DACLAG and ADELINO DACLAG (deceased) Substituted by RODEL M. DACLAG and ADRIAN M. DACLAG, *petitioners, vs.* **ELINO MACAHILIG, ADELA MACAHILIG, CONRADO MACAHILIG, LORENZA HABER and BENITA DEL ROSARIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT ABSENT ANY OF THE RECOGNIZED EXCEPTIONS. — The first two issues raised for resolution are factual. It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case, considering that the findings of facts of the CA are conclusive and binding on the Court. While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (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 facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of 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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could

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justify a different conclusion, none of these exceptions has been shown to apply to the present case and, hence, this Court may not review the findings of fact made by the lower courts.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; SINCE THE VENDOR WAS NOT THE OWNER OF THE LAND SOLD TO PETITIONERS, SHE HAD NO RIGHT TO DISPOSE AND CONVEY THE SAME. — We find no cogent reason to depart from the findings of both the trial court and the CA that Maxima was not the owner of the land she sold to petitioners, and that the one half northern portion of such land was owned by the respondents; that Maxima had no right to dispose of the land and, thus, she had no right to convey the same. To repeat, records show that Maxima entered into a Deed of Extra-judicial Partition with the heirs of her two deceased brothers, namely: Mario and Eusebio, over seven parcels of land owned by Candido and Gregoria Macahilig. One of these lands was the irrigated riceland with an area of 1,896 sq. meters which, per the Deed of Partition, was divided between the heirs of Mario and Eusebio; and the former got the one half southern portion, while the latter got the one half northern portion. Maxima affixed her thumbmark to the Deed. This parcel of riceland was sold by Maxima to petitioners. However, Maxima, at the time of the execution of the Deed of Sale over this parcel of land in favor of petitioner on May 23, 1984, had no right to sell the same as she was not the owner thereof. In fact, Maxima, with the conformity of her husband Pedro, had even executed a Statement of Conformity, in which she affirmed the execution of the Deed of Extra-judicial Partition and conformed to the manner of the partition of shares therein. She attested to the fact that the five parcels of land subject of the Deed of Extra-judicial Partition, which were declared in her name under different tax declarations, were actually properties of her deceased parents; and that she waived all her rights over the lands or portions thereof adjudicated to all her co-heirs. Neither Maxima nor any of her heirs ever questioned the validity of these two above-mentioned documents to which she affixed her thumbmarks. Notably, when the instant complaint was filed by respondents against Maxima and petitioners in 1991, in which respondents claimed as basis of their ownership of the one half northern portion of the riceland was the Deed of Extra-judicial Partition, Maxima, while still living at that time, as

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she died in 1993, never denied the same. As already stated, she failed to file an answer and was declared in default. 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. Maxima's execution of the Deed of Sale selling Parcel One, part of which is respondents' one half northern portion, was not valid and did not transfer ownership of the land to petitioners, as Maxima had no title or interest to transfer. 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.

3. ID.; PROPERTY; OWNERSHIP; VENDOR'S POSSESSION OF THE LAND WAS NOT IN THE CONCEPT OF AN OWNER. — Maxima's possession of the subject land was by reason of her request to her daughter Penicula, who was installed by respondents as tenant after the execution of the Deed of Extra-judicial Partition, as Maxima wanted to farm the land so that she could have a share in the produce, to which Penicula acceded out of pity. It was also established that after the execution of the Deed of Extra-judicial Partition, Penicula as tenant was able to farm the subject land for one cropping year before she allowed her mother Maxima to farm the land thereafter; and, at that time, Penicula gave the corresponding share of the produce of that one crop year to Adela, one of herein respondents, thus establishing respondents' ownership of the subject land. Evidently, Maxima's possession of the land was not in the concept of an owner.

4. ID.; ID.; ID.; WHILE THE LAND WAS DECLARED IN THE VENDOR'S NAME FOR TAXATION PURPOSES, IT DID NOT ESTABLISH OWNERSHIP OF THE SAME; A TAX DECLARATION, BY ITSELF, IS NOT CONSIDERED CONCLUSIVE EVIDENCE OF OWNERSHIP. — While the land was declared in Maxima's name for taxation purposes, it did not establish Maxima's ownership of the same. We have held that a tax declaration, by itself, is not considered conclusive evidence of ownership. It is merely an indicium of a claim of

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ownership. Because it does not by itself give title, it is of little value in proving one's ownership. Petitioners' reliance on Maxima's tax declaration in assuming that she owned Parcel One is an erroneous assumption that should not prejudice the rights of the real owners.

5. ID.; ID.; ID.; THE DEED OF EXTRA-JUDICIAL PARTITION AND STATEMENT OF CONFORMITY WHEREIN THE VENDOR CATEGORICALLY DECLARED THAT THE LAND WAS ACTUALLY OWNED BY HER DECEASED PARENTS IS A DECLARATION AGAINST INTEREST. — The fact that a mortgage was constituted on the land while the same was in Maxima's name would not make Maxima the owner thereof. Maxima's non-ownership of Parcel One was clearly established by the Deed of Extra-judicial Partition and the Statement of Conformity, wherein she categorically declared that the land was actually owned by her deceased parents, to which she separately affixed her thumbmarks. Both documents showed declarations against her interest in the land. A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.

6. ID.; ID.; ID.; COMPLAINT FOR RECONVEYANCE IS STILL WITHIN THE TEN-YEAR PRESCRIPTIVE PERIOD. — Respondents have specifically prayed that petitioners be ordered to restore and reconvey to them the subject land. In an action for reconveyance, the issue involved is one of ownership; and for this purpose, evidence of title may be introduced. Respondents had sufficiently established that Parcel One, covered by OCT No. P-13873, of which respondents' northern one half portion formed a part, was not owned by Maxima at the time she sold the land to petitioners. We have earlier discussed the evidence presented by respondents establishing that Maxima had no claim of ownership over the land sold by her to petitioners. An action for reconveyance prescribes in 10 years, the point of reference being the date of registration of the deed or the date of issuance of the certificate of title over the property. Records show that while the land was registered in the name of petitioner Rogelia in 1984, the instant complaint for reconveyance was filed by the respondents in 1991, and was thus still within the ten-year prescriptive period.

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7. ID.; ID.; ID.; DEFENSE OF HAVING PURCHASED A PROPERTY IN GOOD FAITH MAY BE AVAILED OF ONLY WHERE REGISTERED LAND IS INVOLVED. — Petitioners claim that they were innocent buyers in good faith and for value; that there was no evidence showing that they were in bad faith when they purchased the subject land; that Article 526 of the Civil Code provides that he is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it; and that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. Notably, petitioners bought the property when it was still an unregistered land. The defense of having purchased the 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.

8. ID.; LAND REGISTRATION; POSSESSION OF A CERTIFICATE OF TITLE ALONE DOES NOT NECESSARILY MAKE ONE THE TRUE OWNER OF THE PROPERTY DESCRIBED THEREIN; LAND REGISTRATION LAWS DO NOT GIVE THE HOLDER ANY BETTER TITLE THAN WHAT HE ACTUALLY HAS. — While petitioners were able to secure a certificate of title covering Parcel One in petitioner Rogelia's name, their possession of a certificate of title alone does not necessarily make them the true owners of the property described therein. Our land registration laws do not give the holder any better title than what he actually has. In *Naval v. Court of Appeals*, we held: Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner. x x x notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject

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to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right. We find that reconveyance of the subject land to respondents is proper. The essence of an action for reconveyance is that the free patent and certificate of title are respected as incontrovertible. What is sought is the transfer of the property, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right.

9. ID.; ID.; PETITIONER'S CLAIM THAT THE SUBJECT LAND IS A PUBLIC LAND WAS RAISED ONLY FOR THE FIRST TIME BEFORE THE COURT; ISSUES NOT RAISED AND/OR VENTILATED IN THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL AND CANNOT BE CONSIDERED FOR REVIEW; TO ALLOW SUCH PRACTICE WILL BE TRAMPLING ON THE BASIC PRINCIPLES OF FAIR PLAY, JUSTICE AND DUE PROCESS. — Petitioners claim that the subject land is a public land, and that petitioners were issued title over this land in 1984; that respondents did not present any evidence to prove that the subject land was already a private land prior to their acquisition and the issuance of a free patent title to them; that the presumption that the subject land was formerly part of the mass of alienable lands of public domain under the Regalian doctrine, and was regularly granted to petitioners by way of free patent and certificate of title, remains incontrovertible in favor of petitioner. This issue was only raised for the first time in petitioners' Memorandum filed with us. Well-settled is the rule that issues not raised and/or ventilated in the trial court cannot be raised for the first time on appeal and cannot be considered for review — to consider questions belatedly raised tramples on the basic principles of fair play, justice and due process.

10. ID.; HUMAN RELATIONS; PRINCIPLE OF UNDUE ENRICHMENT; THE COURT UPHELD THE TRIAL COURT'S ORDER FOR PETITIONERS TO PAY RESPONDENTS THEIR CORRESPONDING SHARE IN THE PRODUCE OF THE SUBJECT LAND FROM THE

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TIME THEY WERE DEPRIVED THEREOF UNTIL POSSESSION IS RESTORED TO THEM. — We find no error committed by the CA in affirming the RTC's order for petitioners to pay respondents their corresponding share in the produce of the subject land from the time they were deprived thereof until the possession is restored to them. As aptly stated by the CA, thus: It is said that one of the attributes of ownership is the right to enjoy and dispose of the thing owned. The right to enjoy included the right to receive the produce of the thing. The plaintiffs-appellees, as true owners of the subject land were deprived of their property when Maxima Divison illegally sold it to spouses Daclags. As such, equity demands that the plaintiff-appellees be given what rightfully belonged to them under the time honored principle that a person cannot enrich himself at the expense of another.

APPEARANCES OF COUNSEL

Romeo P. Inocencio for petitioners.
Adolfo M.Iligan for 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 to annul and set aside the Decision[1] dated October 17, 2001 and the Resolution[2] dated August 7, 2003 of the Court of Appeals (CA) in CA G.R. CV No. 48498.

The antecedent facts:

During their lifetime, the spouses Candido and Gregoria Macahilig were the owners of seven parcels of land, all located

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[1] Penned by Justice Ramon Mabutas, Jr. with the concurrence of Justices Roberto A. Barrios (retired) and Edgardo P. Cruz; *rollo*, pp. 35-44

[2] Penned by Justice Roberto A. Barrios and concurred in by Justices Edgardo P. Cruz and Eliezer R. delos Santos, pp. 46-47.

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in Numancia, Aklan. They had seven children, namely: Dionesio, Emeliano, Mario, Ignacio, Eusebio, Tarcela and Maxima.

On March 18, 1982, Maxima, a daughter of Candido and Gregoria entered into a Deed of Extra-judicial Partition[3] with the heirs of her deceased brothers, Mario and Eusebio Macahilig, over the seven parcels of land. The same deed stated that Dionesio was already deceased but was survived by his daughter, Susana Briones; Emeliano was out of the country; Ignacio and Tarcela were also both deceased but were survived by three children each.

One of the properties partitioned in the Deed was a parcel of irrigated riceland located at Poblacion, Numancia, Aklan, with an area of 1,896 square meters declared in the name of Maxima under Tax Declaration No. 644 which was denominated as "Parcel One." This Parcel One was divided between Vicenta Macahilig Galvez for the heirs of Mario Macahilig, who was given the one half southern portion of the land; and Adela Macahilig for the heirs of Eusebio Macahilig, who got the one half northern portion. The Deed was notarized by Municipal Judge Francisco M. Ureta in his capacity as *ex-officio* notary public. The heirs of Eusebio Macahilig are the herein respondents.

On March 19, 1982, Maxima executed a Statement of Conformity[4] in which she confirmed the execution of the Deed of Extra-judicial Partition and conformed to the manner of partition and adjudication made therein. She also attested that five parcels of land in the deed were declared in her name for taxation purposes, although said lands were actually the property of her deceased parents Candido and Gregoria Macahilig; that she waived, renounced and relinquished all her rights to the land adjudicated to all her co-heirs in the deed; and that she had already sold one parcel before the deed was executed, which was considered as her advance share. Pedro Divison, Maxima's husband, also affixed his signature to the Statement of Conformity.

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[3] Records, Exhibit "A"; pp. 113-116.

[4] *Id.*, Exhibit "D", p. 119.

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On May 23, 1984, Maxima sold Parcel One to spouses Adelino and Rogelia Daclag (petitioners) as evidenced by a Deed of Sale.[5]

On July 17, 1984, OCT No. P-13873[6] was issued in the name of petitioner Rogelia M. Daclag by virtue of her free patent application.

On December 16, 1991, Elino Macahilig, Adela Macahilig, Conrado Macahilig, Lorenza Haber and Benita del Rosario (respondents) filed with the Regional Trial Court (RTC) of Kalibo, Aklan a complaint for recovery of possession and ownership, cancellation of documents and damages against Maxima and petitioners, docketed as Civil Case No. 4334.

Respondents alleged that they were the lawful owners and previous possessors of the one half northern portion of Parcel One by virtue of a Deed of Extra-judicial Partition; that since they were all residents of Caloocan City, their land was possessed by their first cousin, Penicula Divison Quijano, Maxima's daughter, as tenant thereon, as she was also in possession of the one half southern portion as tenant of the heirs of Mario Macahilig; that sometime in 1983, upon request of Maxima and out of pity for her as she had no share in the produce of the land, Penicula allowed Maxima to farm the land; that without their knowledge, Maxima illegally sold on May 23, 1984, the entire riceland to petitioners, who are now in possession of the land, depriving respondents of its annual produce valued at ₱4,800.00.

In their Answer with Cross-Claim, petitioners contended that: petitioner Rogelia had been the registered owner of the entire riceland since 1984 as evidenced by OCT No. P-13873; her title had become incontrovertible after one year from its issuance; they purchased the subject land in good faith and for value from co-defendant Maxima who was in actual physical possession of the property and who delivered and conveyed the same to

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[5] *Id.*, Exhibit "B", p. 117.

[6] *Id.*, Exhibit "3", p. 12.

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them; they were now in possession and usufruct of the land since then up to the present; respondents were barred by laches for the unreasonable delay in filing the case. They also filed a cross-claim against Maxima for whatever charges, penalties and damages that respondents may demand from them; and they prayed that Maxima be ordered to pay them damages for the fraud and misrepresentation committed against them.

Respondents subsequently filed an Amended Complaint, upon learning that petitioners were issued OCT No. 13873 by virtue of their free patent application, and asked for the reconveyence of the one half northern portion of the land covered by such title.

The land in question was delimited in the Commissioner's Report and sketch submitted by Bernardo G. Sualog as the one half northern portion, which had an area of 1178 sq. meters. The Report and the sketch were approved by the RTC on June 22, 1991.

For failure of Maxima to file an answer, the RTC declared her in default both in the complaint and cross-claim against her.

After trial, the RTC rendered its Decision[7] dated November 18, 1994, the dispositive portion of which reads:

WHEREFORE, finding preponderance of evidence in favor of plaintiffs [respondents], judgment is hereby rendered as follows:

1. The deed of sale dated May 23, 1984, executed by Maxima Divison in favor of Adelino Daclag and Rogelia Daclag before Notary Public Edgar R. Peralta and docketed in his notarial register as Doc. No. 137, Page No. 30, Book No. VII, Series of 1984 is declared NULL and VOID;

2. The plaintiffs are hereby declared the true and lawful owners and entitled to the possession of the northern one-half (½) portion of the land described under paragraph 2 of the amended complaint and designated as Exhibit "F-1" in the commissioners' sketch with an area of 1,178 square meters;

3. The defendants-spouses Adelino and Rogelia Daclag [petitioners] are hereby ordered and directed to vacate the

[7] Per Judge Sheila Y. Martelino Cortes, Records, pp. 161-167.

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land described in the preceding paragraph and restore and deliver the possession thereof to the plaintiffs;

4. The defendants are ordered to execute a deed of reconveyance in favor of the plaintiffs over the land described in paragraph 2 hereof;

5. The defendants are ordered, jointly and severally, to pay the plaintiffs ten (10) cavans of palay per annum beginning the second cropping of 1984 until the time the possession of the land in question is restored to the plaintiffs; and

6. The defendants are ordered, jointly and severally, to pay the plaintiffs reasonable attorney's fees in the amount of ₱3,000.00 plus cost of the suit.[8]

The RTC found that respondents were able to establish that Parcel One was divided between the heirs of Mario and the heirs of Eusebio, with the former getting the one half southern portion and the latter the one half northern portion embodied in a Deed of Extra-judicial partition, which bore Maxima's thumbmarks; that nobody questioned the Deed's validity, and no evidence was presented to prove that the document was not validly and regularly executed; that Maxima also executed a duly notarized Statement of Conformity dated March 19, 1982 with the conformity of her husband, Pedro. The RTC concluded that when Maxima executed the Deed of Sale in favor of petitioners on May 23, 1984, Maxima had no right to sell that land as it did not belong to her; that she conveyed nothing to petitioners; and that the deed of sale should be declared null and void.

In disposing the issue of whether petitioners could be considered innocent purchasers for value, the RTC ruled that petitioners could not even be considered purchasers, as they never acquired ownership of the land since the sale to them by Maxima was void; and that petitioners' act of reflecting only the price of ₱5,000.00 in the Deed of Sale to avoid paying taxes to the BIR should be condemned for defrauding the government and thus should not be given protection from the courts.

[8] *Id.* at 166-167.

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The RTC further ruled that since petitioners were able to obtain a free patent on the whole land in petitioner Rogelia's name, reconveyance to respondents of the 1,178 sq. meter northern portion of the land was just and proper; that the respondents were entitled to a share in the harvest at two croppings per year after deducting the share of the tenant; that since Maxima died in October 1993, whatever charges and claims petitioners may recover from her expired with her.

Aggrieved, petitioners filed their appeal with the CA.

On October 17, 2001, the CA dismissed the appeal and affirmed the RTC decision.

The CA ruled that since Maxima had no right to sell the land as she was not the rightful owner thereof, nothing was conveyed to petitioners; that a person who acquired property from one who was not the owner and had no right to dispose of the same, obtained the property without right of title, and the real owner may recover the same from him.

The CA found that since respondents were unaware of the sale, it was not a surprise that they did not question petitioners' application for a free patent on the subject land; that the possession by Maxima of the subject land did not vest ownership in her, as her possession was not in the concept of an owner; and that petitioners were not purchasers in good faith. It also found that the right to enjoy included the right to receive the produce of the thing; that respondents as true owners of the subject land were deprived of their property when Maxima illegally sold it to petitioners; and thus, equity demanded that respondents be given what rightfully belonged to them under the principle that a person cannot enrich himself at the expense of another.

Hence, herein petition on the following grounds:

A. THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT DECLARED THAT HEREIN PETITIONERS HAD NO VALID TITLE OVER THE LAND IN QUESTION.

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B. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONERS ARE NOT PURCHASERS OR BUYERS IN GOOD FAITH.

C. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE DECISION OF THE LOWER COURT IN ORDERING THE DEFENDANTS-PETITIONERS JOINTLY AND SEVERALLY TO PAY PER ANNUM BEGINNING THE SECOND CROPPING OF 1984 UNTIL THE TIME THE POSSESSION OF THE LAND IN QUESTION IS RESTORED TO THE PLAINTIFFS [respondents].[9]

The issues for resolution are (1) whether Maxima was the previous owner of Parcel One, which included respondents' one half northern portion, now covered by OCT No. P-13873; 2) whether petitioners could validly invoke the defense of purchasers in good faith; and (3) whether reconveyance is the proper remedy.

Preliminarily, we would like to state the inescapable fact that the Extra-judicial partition of the estate of Candido Macahilig involving the seven parcels of land was made only between Maxima and the heirs of her two deceased brothers Mario and Eusebio.

Section 1 of Rule 74 of the Rules of Court provides:

Section 1. *Extrajudicial settlement by agreement between heirs.* — If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action for partition. x x x

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

[9] *Rollo*, pp. 17-18.

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Records do not show that there has been any case filed by the other heirs who had not participated in the Deed of Extra-judicial Partition and were questioning the validity of such partition. Thus, the resolution of the present case concerns only the issues between the parties before us and will not in any way affect the rights of the other heirs who have not participated in the partition.

The first two issues raised for resolution are factual. It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case, considering that the findings of facts of the CA are conclusive and binding on the Court.[10] While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, namely: (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 facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of 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 CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, could justify a different conclusion,[11] none of these

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[10] *Heirs of Dicman v. Cariño*, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 263.

[11] *Id.*, citing *Rivera v. Roman*, G.R. No. 142402, September 20, 2005, 470 SCRA 276; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals*, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279 (2002).

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exceptions has been shown to apply to the present case and, hence, this Court may not review the findings of fact made by the lower courts.

We find no cogent reason to depart from the findings of both the trial court and the CA that Maxima was not the owner of the land she sold to petitioners, and that the one half northern portion of such land was owned by the respondents; that Maxima had no right to dispose of the land and, thus, she had no right to convey the same.

To repeat, records show that Maxima entered into a Deed of Extra-judicial Partition with the heirs of her two deceased brothers, namely: Mario and Eusebio, over seven parcels of land owned by Candido and Gregoria Macahilig. One of these lands was the irrigated riceland with an area of 1,896 sq. meters which, per the Deed of Partition, was divided between the heirs of Mario and Eusebio; and the former got the one half southern portion, while the latter got the one half northern portion. Maxima affixed her thumbmark to the Deed. This parcel of riceland was sold by Maxima to petitioners. However, Maxima, at the time of the execution of the Deed of Sale over this parcel of land in favor of petitioner on May 23, 1984, had no right to sell the same as she was not the owner thereof.

In fact, Maxima, with the conformity of her husband Pedro, had even executed a Statement of Conformity, in which she affirmed the execution of the Deed of Extra-judicial Partition and conformed to the manner of the partition of shares therein. She attested to the fact that the five parcels of land subject of the Deed of Extra-judicial Partition, which were declared in her name under different tax declarations, were actually properties of her deceased parents; and that she waived all her rights over the lands or portions thereof adjudicated to all her co-heirs.

Neither Maxima nor any of her heirs ever questioned the validity of these two above-mentioned documents to which she affixed her thumbmarks. Notably, when the instant complaint was filed by respondents against Maxima and petitioners in 1991, in which respondents claimed as basis of their ownership of the one half northern portion of the riceland was the Deed of Extra-

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judicial Partition, Maxima, while still living at that time, as she died in 1993, never denied the same. As already stated, she failed to file an answer and was declared in default.

In a contract of sale, it is essential that the seller is the owner of the property he is selling.[12] Under Article 1458 of the Civil Code, the principal obligation of a seller is to transfer the ownership of the property sold.[13] 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. Maxima's execution of the Deed of Sale selling Parcel One, part of which is respondents' one half northern portion, was not valid and did not transfer ownership of the land to petitioners, as Maxima had no title or interest to transfer. 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.[14]

Petitioners insist that Maxima owned the subject land as shown by her actual and continuous possession of the same; that it was declared in her name for taxation purposes; that throughout the time that Maxima and her children were in possession of the property, she never gave any share of the produce to respondents; and that Maxima even mortgaged the land to a bank.

We are not persuaded.

Maxima's possession of the subject land was by reason of her request to her daughter Penicula, who was installed by respondents as tenant after the execution of the Deed of Extra-

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[12] *Noel v. Court of Appeals*, G.R. No. 59550, January 11, 1995, 240 SCRA 78, 88.

[13] Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefore a price certain in money or its equivalent.

[14] *Naval v. Court of Appeals*, G.R. No. 167412, February 22, 2006, 483 SCRA 102,112 citing *Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals*, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 363.

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judicial Partition, as Maxima wanted to farm the land so that she could have a share in the produce, to which Penicula acceded out of pity.[15] It was also established that after the execution of the Deed of Extra-judicial Partition, Penicula as tenant was able to farm the subject land for one cropping year before she allowed her mother Maxima to farm the land thereafter; and, at that time, Penicula gave the corresponding share of the produce of that one crop year to Adela,[16] one of herein respondents, thus establishing respondents' ownership of the subject land. Evidently, Maxima's possession of the land was not in the concept of an owner.

While the land was declared in Maxima's name for taxation purposes, it did not establish Maxima's ownership of the same. We have held that a tax declaration, by itself, is not considered conclusive evidence of ownership.[17] It is merely an indicium of a claim of ownership.[18] Because it does not by itself give title, it is of little value in proving one's ownership.[19] Petitioners' reliance on Maxima's tax declaration in assuming that she owned Parcel One is an erroneous assumption that should not prejudice the rights of the real owners.

The fact that a mortgage was constituted on the land while the same was in Maxima's name would not make Maxima the owner thereof. Maxima's non-ownership of Parcel One was clearly established by the Deed of Extra-judicial Partition and the Statement of Conformity, wherein she categorically declared

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[15] TSN, February 24, 1993, pp. 4-5.

[16] TSN, March 24, 1993, p. 7.

[17] *Titong v. Court of Appeals*, G.R. No. 111141, March 6, 1998, 287 SCRA 102, 115 citing *Rivera v. Court of Appeals*, 314 Phil. 57 (1995); *Republic v. Intermediate Appellate Court*, G.R. No. 74380, July 5, 1993, 224 SCRA 285, 296; *De Jesus v. Court of Appeals*, G.R. No. 57092, January 21, 1993, 217 SCRA 307, 317.

[18] *Id.*, citing *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, March 2, 1993, 219 SCRA 339, 348.

[19] *Id.*; *Sapu-an v. Court of Appeals*, G.R. No. 91869, October 19, 1992, 214 SCRA 701.

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that the land was actually owned by her deceased parents, to which she separately affixed her thumbmarks. Both documents showed declarations against her interest in the land. A declaration against interest is the best evidence which affords the greatest certainty of the facts in dispute.[20]

While petitioners were able to secure a certificate of title covering Parcel One in petitioner Rogelia's name, their possession of a certificate of title alone does not necessarily make them the true owners of the property described therein. Our land registration laws do not give the holder any better title than what he actually has.[21]

In *Naval v. Court of Appeals*,[22] we held:

> Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.
>
> x x x notwithstanding the indefeasibility of the Torrens title, the registered owner may still be compelled to reconvey the registered property to its true owners. The rationale for the rule is that reconveyance does not set aside or re-subject to review the findings of fact of the Bureau of Lands. In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property or its title which has been wrongfully or erroneously registered in another person's name, to its rightful or legal owner, or to the one with a better right.[23]

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[20] *Noda v. Cruz-Arnaldo*, G.R. No. 57322, June 22, 1987, 151 SCRA 227.

[21] *Heirs of Romana Ingjug-Tiro v. Casals*, G.R. No. 134718, August 20, 2001, 363 SCRA 435, 442.

[22] *Supra* note 14, at 113.

[23] *Id*.

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We find that reconveyance of the subject land to respondents is proper. The essence of an action for reconveyance is that the free patent and certificate of title are respected as incontrovertible. What is sought is the transfer of the property, which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right.[24]

Respondents have specifically prayed that petitioners be ordered to restore and reconvey to them the subject land. In an action for reconveyance, the issue involved is one of ownership; and for this purpose, evidence of title may be introduced. Respondents had sufficiently established that Parcel One, covered by OCT No. P-13873, of which respondents' northern one half portion formed a part, was not owned by Maxima at the time she sold the land to petitioners. We have earlier discussed the evidence presented by respondents establishing that Maxima had no claim of ownership over the land sold by her to petitioners.

An action for reconveyance prescribes in 10 years, the point of reference being the date of registration of the deed or the date of issuance of the certificate of title over the property.[25] Records show that while the land was registered in the name of petitioner Rogelia in 1984, the instant complaint for reconveyance was filed by the respondents in 1991, and was thus still within the ten-year prescriptive period.

Petitioners claim that they were innocent buyers in good faith and for value; that there was no evidence showing that they were in bad faith when they purchased the subject land; that Article 526 of the Civil Code provides that he is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it; and that good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

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[24] *Mendizabel v. Apao*, G.R. No. 143185, February 26, 2006, 482 SCRA 587, 608.

[25] *Leyson v. Bontuyan*, G.R. No. 156357, February 18, 2005, 452 SCRA 94, 113.

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Notably, petitioners bought the property when it was still an unregistered land. The defense of having purchased the 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.[26]

In *Ong v. Olasiman*[27] in which a claim of good faith was raised by petitioner who bought an unregistered land, we held:

> Finally, petitioners' claim of good faith does not lie too as it is irrelevant:
>
> [T]he issue of good faith or bad faith of the buyer is relevant only where the subject of the sale is registered land and the purchaser is buying the same from the registered owner whose title to the land is clean x x x in such case the purchaser who relies on the clean title of the registered owner is protected if he is a purchaser in good faith for value. Since the properties in question are unregistered lands, petitioners as subsequent buyers thereof did so at their peril. Their claim of having bought the land in good faith, *i.e.*, 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 their seller did not own the property at the time of the sale.[28]

Petitioners claim that the subject land is a public land, and that petitioners were issued title over this land in 1984; that respondents did not present any evidence to prove that the subject land was already a private land prior to their acquisition and the issuance of a free patent title to them; that the presumption that the subject land was formerly part of the mass of alienable lands of public domain under the Regalian doctrine, and was regularly granted to petitioners by way of free patent and certificate of title, remains incontrovertible in favor of petitioner.

This issue was only raised for the first time in petitioners' Memorandum filed with us. Well-settled is the rule that issues

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[26] *Naval v. Court of Appeals*, *supra* note 14, at 111; *David v. Bandin*, G.R. No. L-48322, April 8, 1987, 149 SCRA 140, 150.

[27] G.R. No. 162045, March 28, 2006, 485 SCRA 464.

[28] *Ong v. Olasiman*, *supra* note 27, at 472.

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not raised and/or ventilated in the trial court cannot be raised for the first time on appeal and cannot be considered for review — to consider questions belatedly raised tramples on the basic principles of fair play, justice and due process.[29]

Finally, we find no error committed by the CA in affirming the RTC's order for petitioners to pay respondents their corresponding share in the produce of the subject land from the time they were deprived thereof until the possession is restored to them. As aptly stated by the CA, thus:

> It is said that one of the attributes of ownership is the right to enjoy and dispose of the thing owned, The right to enjoy included the right to receive the produce of the thing. The plaintiffs-appellees, as true owners of the subject land were deprived of their property when Maxima Divison illegally sold it to spouses Daclags. As such, equtiy demands that the plaintiff-appeellees be given what rightfully belonged to them under the time honored principle that a person cannot enrich himself at the expense of another.

WHEREFORE, the petition for review is *DENIED*. The Decision dated October 17, 2001 and Resolution dated August 7, 2003 of the Court of Appeals are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

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[29] *Cruz v. Fernando*, G.R. No. 145470, December 9, 2005, 477 SCRA 173, 182; *Department of Agrarian Reform v. Franco*, G.R. No. 147479, September 26, 2005, 471 SCRA 74, 92-93; *Gualberto v. Go*, G.R. No. 139843, July 21, 2005, 463 SCRA 671, 678; *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 503-04; *De Rama v. Court of Appeals*, G.R. No. 131136, February 28, 2001, 353 SCRA 94; *Caltex (Phils.), Inc. v. Court of Appeals*, G.R. No. 97753, August 10, 1992, 212 SCRA 448, 461; *BA Finance Corporation v. Court of Appeals*, G.R. No. 82040, 27 August 1991, 201 SCRA 157, 164.