Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEIRS OF THE LATE APOLINARIO CABURNAY, NAMELY, LYDIA CABURNAY, LETECIA NAVARRO, EVANGELINE CRUZ, JERRY CABURNAY, ZENAIDA C. ANCHETA, LIWAYWAY C. WATAN, GLORIA GUSILAN, APOLINARIO CABURNAY, JR., Petitioners,	**G.R. No. 230934**
	Present:
	PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
- versus -	
HEIRS OF TEODULO SISON,* NAMELY, ROSARIO SISON, OFELIA SISON, TEODULO SISON, JR., BLESILDA SISON, ARMIDA SISON, CYNTHIA SISON, JESUS SISON AND PERLA*** SISON,** Respondents.	Promulgated: DEC 02 2020

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DECISION

CAGUIOA, *J.:*

Before the Court is the Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Heirs of the late Apolinario Caburnay (petitioners) assailing the Decision[2] dated November 11, 2016 and Resolution[3] dated April 12, 2017 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 106010. The CA Decision denied the appeal of

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* Also Teodulo Sison, Sr. in some parts of the *rollo*.

** Also Blesisida in some parts of the *rollo*.

*** Also Perlas in some parts of the *rollo*.

1 *Rollo*, pp. 20-40, excluding Annexes.

2 Id. at 42-47. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Romeo F. Barza and Danton Q. Bueser concurring.

3 Id. at 57-59. Penned by Associate Justice Romeo F. Barza, with Associate Justices Danton Q. Bueser and Socorro B. Inting concurring.

4 Special First Division and Special Former Special First Division.

petitioners and affirmed the Decision[5] dated November 16, 2015 of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 (RTC) in Civil Case No. 19135. The CA Resolution denied petitioners' motion for reconsideration.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> The instant case stemmed from a complaint filed by [petitioners] against [respondents Heirs of Teodulo Sison (respondents)] for specific performance, declaration of nullity of document and title and damages.
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> [Petitioners] alleged that on September 23, 1994, [respondents'] predecessor-in-interest Teodulo Sison [(Teodulo)] sold a parcel of land to [petitioners'] predecessor-in-interest Apolinario Caburnay [(Apolinario)]. The [subject] property was covered by Transfer Certificate of Title (TCT) No. 8791 with an approximate area of 7,768 square meters. The parties agreed that Apolinario would pay P40,000.00 as initial payment of the total purchase price of P150,000.00, the rest of which was to be paid in installments. The receipt of the initial payment was acknowledged by Teodulo in a handwritten receipt, also dated September 23, 1994. Consequently, Apolinario's family occupied the property.
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> [At the time of the sale in 1994, Teodulo's first wife, Perpetua Sison (Perpetua), had died in 1989 and he had married in 1992 his second wife, Perla (Perla) Sison, who did not give her consent to the sale.[6]]
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> The second installment in the amount of P40,000.00 was paid by Apolinario on August 14, 1996 and, another handwritten receipt was executed by Teodulo. The third installment was made on October 20, 1999 in the amount of P40,000.00, as reflected in the handwritten receipt which also stated that Teodulo would start processing the transfer of the title upon payment of the remaining balance of P30,000.00.
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> However, Teodulo passed away [on December 22, 2000[7]] before the balance of the purchase price could be paid. Consequently, Apolinario informed Teodulo's heirs, herein [respondents], about the sale and payment of his remaining balance. [Respondent] Jesus Sison [(Jesus)] told Apolinario that they could not locate the certificate of title and they agreed to settle the amount once the TCT was found.
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> Due to Apolinario's advanced age and failing memory, no follow-up was made thus, the purchase price remained unpaid until his death in April 2005.
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> Upon Apolinario's death, his heirs tried to pay the balance of the purchase price but Jesus x x x rejected the payment. [Petitioners] later discovered that [respondents] had executed an Extrajudicial Settlement of [the] Estate[s] of Teodulo and his wife Perpetua and the same included the subject property which was given to Jesus x x x.

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5 *Rollo*, pp. 77-86. Penned by Presiding Judge Teodoro C. Fernandez.
6 Id. at 30, 45.
7 Id. at 83.

> As a result of the extrajudicial settlement, Jesus x x x effected the cancellation of TCT No. 8791 and caused the issuance of TCT No. 22388 in his favor. Thus, [petitioners] prayed that the document captioned Extrajudicial Settlement of Estate be declared null and void and consequently, nullify TCT [N]o. 22388 in the name of Jesus x x x. They also asked that Jesus x x x be compelled to execute a Deed of Absolute Sale in their favor upon payment of the remaining balance of P30,000.
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> x x x x
>
> [Respondents], on the other hand, denied the execution of the sale between Teodulo and Apolinario, averring that there was no deed of sale recorded at the Registry of Deeds thus, the subject property was free from encumbrances when the same was included in the partition of the estate of Teodulo and Perpetua x x x.
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> It was further claimed that Apolinario was a mere caretaker of the property thus, Teodulo and his family consented to his occupation thereof. Upon the transfer of the property to Jesus x x x, he demanded that [petitioners] vacate the same but they refused.
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> [Respondents] also argue that the action was barred by prescription and that the receipts only showed that there was a contract to sell and not one of sale.
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> x x x x
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> After weighing the arguments and evidence presented before it, the trial court rendered the [Decision] dated November 16, 2015. While it found the receipts issued by Teodulo x x x to Apolinario to be genuine, the sale in favor of Apolinario was however, declared null and void because the property is presumed to be conjugal and there was no evidence of the consent to the sale by Teodulo's wife, Perpetua. Thus:
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> > **WHEREFORE**, premises considered, judgment is hereby rendered **dismissing** the instant complaint for lack of merit.
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> > Costs against [petitioners].
> >
> > SO ORDERED.[8]

Petitioners appealed the RTC Decision to the CA.

Ruling of the CA

The CA, in its Decision[9] dated November 11, 2016, denied petitioners' appeal. The CA agreed with respondents that the property regime governing the marriage between Perla and Teodulo is absolute community, having been contracted during the effectivity of the Family Code.[10] The CA pointed out that under Article 91 of the Family Code, the community property consists of all the property owned by the spouses at the

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8 Id. at 43-45.
9 Supra note 2.
10 Id. at 46.

time of the celebration of the marriage or acquired thereafter and, under Article 92, property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as income, if any, of such property is excluded from the community property. The purpose of the exclusion is to protect the rights and interests of the legitimate descendants by the first marriage over the property and to ensure that the children born of the prior marriage are not deprived of their share in the properties of their parents.[11]

The CA then pronounced that in the instant case, the exclusion does not apply considering that "Perla x x x recognizes the co-ownership between Teodulo and his children with Perpetua, as seen in the extrajudicial settlement document[, and thus,] there is no risk of depriving them of their rights over the conjugal property of Teodulo and Perpetua."[12]

Citing *Nobleza v. Nuega*,[13] where the sale by the husband of community property without the wife's consent was declared void,[14] the CA ruled that:

> In the instant case, there is no showing that [respondent] Perla gave her consent to the sale of Teodulo's share of the subject property. Accordingly, the sale is void in its entirety, contrary to the claim of [petitioners].[15]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, in view of the foregoing, the Appeal is **DENIED**. The *Decision*, dated November 16, 2015, rendered by the Regional Trial Court of Lingayen, Pangasinan, Branch 38 in Civil Case No. 19135 is **AFFIRMED**.
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> **SO ORDERED.**[16]

Petitioners filed a Motion for Reconsideration,[17] which the CA denied in its Resolution[18] dated April 12, 2017.

Hence the present Petition. Respondents filed their Comment[19] dated October 16, 2017. Petitioners filed a Reply[20] dated November 30, 2017.

The Issues

The Petition presents two issues:

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11 Id.
12 Id.
13 G.R. No. 193038, March 11, 2015, 752 SCRA 602.
14 *Rollo*, p. 46.
15 Id. at 47.
16 Id.
17 Id. at 48-55.
18 Supra note 3.
19 Id. at 92-99.
20 Id. at 101-105.

1. Whether the CA misapplied Article 92 of the Family Code when it ruled that the sale of the property acquired during the first marriage by the surviving husband, who had surviving children in the first marriage, without the consent of the second spouse who recognized the existence of co-ownership between the husband and his children in the first marriage, is void.

2. Whether the CA erred when it ignored the clear provisions of Articles 92 and 103 in relation to Article 145 of the Family Code authorizing the surviving spouse to dispose of his share in the conjugal property in the first marriage even without the consent of his second spouse.[21]

The Court's Ruling

The Petition is partly meritorious.

Usually, precedents are not set when the lower courts correctly apply the law. That a correct ruling by a lower court may no longer be elevated to the Court and, without the Court's imprimatur, it may not be accorded its due jurisprudential significance. In instances, however, where the lower courts misapply or misread the law and the cases get elevated to the Court, precedents are set and jurisprudence is thereby enriched.

Had petitioners accepted the ruling of the RTC and of the CA in this case, jurisprudence would not have benefitted from their appeal to this Court.

In a nutshell, the present case involves a husband (Teodulo), who has married twice and has children (petitioners) from the first marriage. After the death of his first wife (Perpetua) and while married to his second wife (Perla), the husband entered into a contract wherein he sold property acquired in his first marriage without the consent of his second wife. Needless to say, the children from the first marriage did not also consent.[22] Is the sale valid or void the Court is asked.

The lower courts ruled that the sale is void. Petitioners want the Court to overturn such ruling. They argue that while the CA ruled that the property regime governing Teodulo and Perla is absolute community, their marriage having been contracted after the effectivity of the Family Code, the subject property should be excluded from their community property having been acquired before their marriage by Teodulo, who has legitimate children by his former marriage with Perpetua by virtue of Article 92(3) of the Family Code.[23] This excluded property remains the separate property of the spouse,

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21 Id. at 28.

22 In denying the execution of the sale between Apolinario and Teodulo and in asserting there was no deed of sale registered with the Register of Deeds, respondents, which include the children of Teodulo from the first marriage, could not be deemed to have given their consent to the sale. *Rollo*, p. 44.

23 *Rollo*, pp. 28-30.

who has remarried, and it is subject to his full right of disposition, with the price from such alienation continuing to be his separate property.[24] Petitioners point out that at the time of the celebration of Teodulo's marriage with Perla, he had legitimate descendants, namely, respondents Teodulo, Jr., Rosario, Ofelia, Blesilda, Armida, Jesus and Cynthia, all surnamed Sison.[25]

Petitioners invoke Article 103 of the Family Code, which provides that should the surviving spouse contract a subsequent marriage without liquidation of the prior marriage, then the mandatory regime of complete separation of property will govern the property relations of the subsequent marriage.[26] As such, petitioners assert that Teodulo could validly dispose of his share in the property acquired during his first marriage without needing to obtain the consent of his second spouse. They rely on Article 145 of the Family Code which authorizes each spouse under the regime of separation of property to dispose of his or her own separate estate, without need of the consent of the other.[27]

Since the consent of Perla is not required, petitioners conclude that the sale of the subject property between Teodulo and Apolinario should be recognized as valid insofar as the share of Teodulo in the subject property is concerned, consisting of his 1/2 share of the entire property representing his conjugal share and another 1/5 of the other half, representing his share in the conjugal share of his first wife Perpetua.[28] Upon recognition of the validity of the sale, respondent Jesus should be ordered to convey to petitioners "the one[-]half (1/2) portion of the said property plus the one[-]fifth (1/5) share of the late Teodulo x x x on the other half of the property in question [now covered by TCT No. 22388 in the name of Jesus]."[29]

On the other hand, respondents argue that the regime of complete separation of property does not apply in the case because: (1) there was no pre-nuptial agreement between Teodulo and Perla that they adopted such regime to govern their property relations; and (2) it applies only where the disposition is made after the death of a spouse, which is not the case here as both Teodulo and Perla were alive when the alleged sale to Apolinario took place.[30] Respondents also argue that Article 103 of the Family Code applies when the property regime of a previous marriage was governed by absolute community property, but the property regime of Teodulo and Perpetua was conjugal partnership of gains since they were married under the Civil Code, without any pre-nuptial agreement.[31] Besides, respondents posit that inasmuch as in this case, there was an extrajudicial settlement of the estate

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24 Id. at 31.
25 Id. at 30. Note that petitioners did not include respondent Jesus Sison in their enumeration of the legitimate children of the late spouses Teodulo and Perpetua.
26 Id. at 31-32.
27 Id. at 32.
28 Id. at 35-36.
29 Id. at 36.
30 Id. at 93.
31 Id.

of the first wife and the property regime of the surviving spouse with the first wife was conjugal partnership of gains, then Article 103, which presupposes the absence of a settlement of the deceased first spouse's estate and the existence of absolute community property regime, is inappropriate.[32] Lastly, respondents argue that Article 145 of the Family Code does not apply for it refers to separate property of the spouses in case their property regime is governed by conjugal partnership of gains, but the property regime of Teodulo and Perla is absolute community property because they were married during the effectivity of the Family Code.[33]

Both parties agree that, having been married during the effectivity of the Civil Code and without any marriage settlements executed before their marriage, the property regime of Teodulo and his first wife, Perpetua, was conjugal partnership of gains pursuant to Article 105 of the Family Code, which provides:

> Art. 105. x x x
>
> The provisions of this Chapter [Conjugal Partnership of Gains] shall also apply to conjugal partnership of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256. (n)

Also, it is undisputed that the subject property was acquired during the marriage of Teodulo and Perpetua. As such, the subject property was their conjugal property.

Both the RTC and the CA held that conjugal partnership of gains did govern the property relations of Teodulo and Perpetua and the subject property is thus their conjugal property, having been acquired during their marriage which was celebrated during the effectivity of the Civil Code.

The death of a married person triggers legal consequences, among which are: termination or dissolution of the marriage; termination of the absolute community or conjugal partnership; and succession with respect to the estate of the deceased spouse.

When Perpetua died on July 19, 1989,[34] the conjugal partnership between her and Teodulo was terminated pursuant to Article 126(1) of the Family Code.[35] The rule was the same under Article 175(1) of the Civil

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32 Id. at 94.

33 Id.

34 See records, pp. 66 and 236.

35 FAMILY CODE, Article 126 provides:

> ART. 126. The conjugal partnership terminates:
> (1) Upon the death of either spouse;
> (2) When there is a decree of legal separation;
> (3) When the marriage is annulled or declared void; or,

Code: "The conjugal partnership of gains terminates x x x upon the death of either spouse x x x."

With Perpetua's death, the liquidation of the conjugal partnership between her and Teodulo should have ensued. Pursuant to Article 129 of the Family Code, after inventory, mutual restitution and payment of debts, the net remainder of the conjugal properties, constituting the profits of the conjugal partnership, shall be divided equally between the spouses and/or their respective heirs, unless a different proportion has been agreed upon in their marriage settlements, or unless the surviving spouse or the heirs of the deceased renounce their shares, and the presumptive legitimes of the common children shall be then delivered, to be taken from the total properties (the share in the conjugal properties and the balance of separate properties) pertaining to each spouse in proper cases in accordance with Article 51 of the Family Code.[36] In the case, however, of the dissolution of the marriage due to the death of a spouse, the common children are entitled to their respective shares as legal heirs in the estate of the deceased spouse.

In many instances, however, the surviving spouse and the heirs of the deceased spouse do not liquidate the conjugal properties and they keep them undivided. In such case, a co-ownership is deemed established for the management, control and enjoyment of the common property. Since the conjugal partnership no longer subsists, the fruits of the common property are divided according to the law on co-ownership; that is, in proportion to the share or interest of each party.[37] That share or part of the co-heir in the co-ownership prior to partition is *pro indiviso*, undivided or abstract, not specific, delineated or demarcated by metes and bounds.

As far as the conjugal partnership property of Teodulo and Perpetua, subject matter of the conflict herein, 1/2 undivided interest therein pertained to Teodulo as his conjugal share and the other half, which was Perpetua's conjugal share, pertained to her legal heirs. Based on the facts, there is no mention of conjugal debts at the time of Perpetua's death. There is likewise no mention of any conjugal property other than the subject property. Thus, the subject property became co-owned property of Teodulo and the heirs of Perpetua upon Perpetua's death.

Pending liquidation of the conjugal partnership, the alienations and encumbrances of the parties or co-owners must be considered limited to their respective undivided interests, and cannot involve any particular or specific property or physical part of it. This means that the alienation or encumbrance may be valid as to the undivided interest of the vendor but not as to the *corpus* or body or physical portion of the property; and the vendee

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(4) In case of judicial separation of property during the marriage under Articles 134 to 138. (175a)

[36] See Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES (Volume One with The Family Code of the Philippines, 1990 ed.), pp. 472-474.

[37] See id. at 394.

will get the property that may be adjudicated in the partition to the vendor, but not any portion of what may be allotted to the other co-owners.[38]

The foregoing is consistent with the ownership rights of each co-owner, which are spelled out in Article 493 of the Civil Code, to wit:

> ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399)

Aside from the dissolution of the marriage between Perpetua and Teodulo and their conjugal partnership, Perpetua's death triggered the transfer of her inheritance or hereditary estate to her legal heirs pursuant to Article 777 of the Civil Code, which provides: "The rights to the succession are transmitted from the moment of the death of the decedent." Since there is no mention of any will that she left, Perpetua died intestate.

Perpetua was survived by her husband, Teodulo, and their seven legitimate children, namely, respondents Teodulo, Jr., Rosario, Ofelia, Blesilda, Armida, Jesus and Cynthia, all surnamed Sison. Article 996 of the Civil Code states: "If 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." Since there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased, as provided in Article 1078 of the Civil Code.

Upon Perpetua's death, her one-half *pro indiviso* conjugal share in the subject property was inherited by her widower, Teodulo, and their seven legitimate children equally, with each legal heir entitled to 1/8 *pro indiviso* share therein, or 1/16 undivided interest in the subject property. In totality, Teodulo became co-owner of the subject property to the extent of 9/16, consisting of his 1/2 conjugal share and 1/16 of the conjugal share of Perpetua. Thus, at the time of Perpetua's death, the subject property became co-owned by Teodulo (to the extent of 9/16) and each of the seven children (to the extent of 1/16 each).

Petitioners therefore erred in claiming that Teodulo was entitled to "the one[-]half (1/2) portion of the said property plus the one fifth (1/5) share of the late Teodulo x x x on the other half of the property in question [now covered by TCT No. 22388 in the name of Jesus]."[39] Petitioners did not even explain how they arrived at his purported 1/5 share in the estate of

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[38] Id. at 394-395.
[39] *Rollo*, p. 36.

Perpetua, which is the other half of the subject property. If the 1/5 fraction is used as basis to divide Perpetua's estate, Teodulo and Perpetua should have only four children. But they had seven children.

When the marriage is terminated by death, Article 130 of the Family Code specifically provides for the liquidation of the conjugal partnership within one year from the death of the deceased spouse:

> ART. 130. Upon the termination of the marriage by death, the conjugal partnership property shall be liquidated in the same proceeding for the settlement of the estate of the deceased.
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> If no judicial settlement proceeding is instituted, the surviving spouse shall liquidate the conjugal partnership property either judicially or extrajudicially within one year from the death of the deceased spouse. If upon the lapse of said period no liquidation is made, any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void.
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> Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. (n)

Parenthetically, a similar provision (Article 103) governs with respect to the absolute community property regime. Three methods of liquidation of the conjugal property are mentioned in the above-quoted provision: (1) judicial settlement in a testate or intestate proceeding; (2) judicial action, or ordinary action for partition; and (3) extrajudicial settlement. Any of the three should be resorted to within one year from the death of the deceased spouse.[40]

Likewise, Article 130 provides two consequences if no liquidation is effected within the one-year period: (1) "any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void;" and (2) "[s]hould the surviving spouse contract a subsequent marriage x x x, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage."

A noted civil law expert has expressed certain reservations with respect to these effects, to wit:

> If no liquidation is made within the one-year period, the law says, "any disposition or encumbrance involving the [conjugal partnership] property of the terminated marriage shall be void." The validity of the alienation or encumbrance can be challenged by the heirs of the deceased spouse. Such alienation or encumbrance, however, shall be valid to the extent of what is allot[t]ed in the property involved, in the final partition, to the vendor or mortgagor. So if the property sold or mortgaged is finally

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40 Arturo M. Tolentino, supra note 36, at 403.

> allot[t]ed to the vendor or mortgagor as his share, the alienation or encumbrance shall be valid. It shall also be valid if the surviving spouse is the only heir of the deceased spouse.
>
> x x x If no liquidation of the first marriage property has taken place and the surviving spouse re-marries, this article imposes a mandatory regime of separation of properties for the subsequent marriage. We see no logical reason for this. If after the celebration of the subsequent marriage, the heirs of the deceased spouse succeed to get a partition of the properties of the first marriage, why should the regime of separation of property continue for the second marriage? The spouses in the new marriage may want to establish a system of community [property]; but it would be too late to have a marriage settlement.[41]

After Perpetua's death, there was no liquidation of the conjugal property of Teodulo and Perpetua within the one-year period provided in Article 130. It must be recalled that respondents executed an extrajudicial settlement of the estates of Teodulo and Perpetua only after Teodulo's demise wherein the subject property was given to Jesus. As it stands, the subject property is now registered in the name of Jesus.

At this juncture, the Court notes that, on three prior occasions, it has interpreted the proviso in Article 130 of the Family Code regarding the disposition or encumbrance involving the conjugal partnership property of the terminated marriage where no liquidation of the terminated marriage property is made within one year from the death of the deceased spouse. These cases, however, do not involve a subsequent marriage of the surviving spouse and the disposition of the terminated marriage property being made during the subsistence of the subsequent marriage, without the consent of the surviving spouse's second spouse.

Firstly, in *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*[42] (*Heirs of Go*), the validity of the sale made by the surviving husband and his son of a portion of the conjugal property the surviving husband had with the deceased wife, without prior liquidation as mandated by Article 130, was challenged.

Briefly, the pertinent factual setting of *Heirs of Go* was: after the death in November 1987 of Marta Barola Go, wife of Protacio, Sr., the latter, together with their son Rito Go, sold in December 1999 a portion of two parcels of land with a total area of 17,140 square meters to Ester Servacio for ₱5,686,768.00. The conjugal partnership property was not liquidated prior to the sale and the said parcels were conjugal property of Marta and Protacio, Sr., there being no dispute that they were married prior to the effectivity of the Family Code on August 3, 1988.

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41 Id. at 403-404.

42 G.R. No. 157537, September 7, 2011, 657 SCRA 10. Rendered by the First Division; penned by Associate Justice Lucas P. Bersamin and concurred in by Chief Justice Renato C. Corona and Associate Justices Teresita J. Leonardo-De Castro, Mariano C. Del Castillo and Martin S. Villarama, Jr.

The Court in *Heirs of Go* stated:

> x x x Upon Marta's death in 1987, the conjugal partnership was dissolved, pursuant to Article 175 (1) of the *Civil Code*, and an implied ordinary co-ownership ensued among Protacio, Sr. and the other heirs of Marta with respect to her share in the assets of the conjugal partnership pending x x x its liquidation. The ensuing implied ordinary co-ownership was governed by Article 493 of the *Civil Code* x x x.
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> x x x x
>
> Protacio, Sr., although becoming a co-owner with his children in respect of Marta's share in the conjugal partnership, could not yet assert or claim title to any specific portion of Marta's share without an actual partition of the property being first done either by agreement or by judicial decree. Until then, all that he had was an ideal or abstract quota in Marta's share. Nonetheless, a co-owner could sell his undivided share; hence, Protacio, Sr. had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners. Consequently, the sale by Protacio, Sr. and Rito as co-owners without the consent of the other co-owners was **not necessarily void**, for the rights of the selling co-owners were thereby effectively transferred, making the buyer (Servacio) a co-owner of Marta's share. This result conforms to the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).
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> Article 105 of the *Family Code* x x x expressly provides that the applicability of the rules on dissolution of the conjugal partnership is "without prejudice to vested rights already acquired in accordance with the *Civil Code* or other laws." This provision gives another reason not to declare **the sale as entirely void**. Indeed, such a declaration prejudices the rights of Servacio who had already acquired the shares of Protacio, Sr. and Rito in the property subject of the sale.
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> x x x x
>
> > "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.
> >
> > x x x x
> >
> > Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent [was] 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. x x x"

In the meanwhile, Servacio would be a trustee for the benefit of the co-heirs of her vendors in respect of any portion that might not be validly

sold to her. The following observations of Justice Paras are explanatory of this result, *viz.*:

> "x x x [I]f it turns out that the property alienated or mortgaged really would pertain to the share of the surviving spouse, then said transaction is valid. If it turns out that there really would be, after liquidation, no more conjugal assets then the whole transaction is null and void. But if it turns out that half of the property thus alienated or mortgaged belongs to the husband as his share in the conjugal partnership, and half should go to the estate of the wife, then that corresponding to the husband is valid, and that corresponding to the other is not. Since all these can be determined only at the time the liquidation is over, it follows logically that a disposal made by the surviving spouse is **not void ab initio**. Thus, it has been held that the sale of conjugal properties cannot be made by the surviving spouse without the legal requirements. **The sale is void as to the share of the deceased spouse** (except of course as to that portion of the husband's share inherited by her as the surviving spouse). The buyers of the property that could not be validly sold become trustees of said portion for the benefit of the husband's other heirs, the *cestui que* [*trustent*]. x x x (See *Cuison, et al. v. Fernandez, et al.*, L-11764, Jan. 31, 1959.)"[43] (Emphasis and underscoring supplied; emphasis in the original omitted)

The second case, *Domingo v. Molina*[44] (*Domingo*), merely adopted the formulation in *Heirs of Go*.

In summary, *Domingo* involved the sale by Anastacio Domingo (Anastacio) on September 10, 1978, or ten years after the death of his wife Flora, of his interest in the land subject of the case. The sale was annotated on the Original Certificate of Title covering the land with the following statement: "**[o]nly the rights, interests and participation of Anastacio Domingo**, married to Flora Dela Cruz, [are] hereby sold, transferred, and conveyed unto the said vendees for x x x P1,000.00 x x x which **pertains to an undivided one-half (1/2) portion** and subject to all other conditions specified in the document x x x."[45]

The Court, following the discussion in *Heirs of Go*, stated that being married prior to the effectivity of the Family Code, the property relation of spouses Anastacio and Flora Domingo was conjugal partnership, which was dissolved when Flora died in 1968 pursuant to Article 175(1) of the Civil Code (now Article 126(1) of the Family Code). Then the Court cited Article 130 of the Family Code, which requires the liquidation of the conjugal partnership upon the death of a spouse and prohibits any disposition or

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43 Id. at 15-19. Citations omitted.

44 G.R. No. 200274, April 20, 2016, 791 SCRA 47. Rendered by the Second Division; penned by Associate Justice Arturo D. Brion and concurred in by Associate Justices Antonio T. Carpio, Mariano C. Del Castillo, Jose C. Mendoza and Marvic M.V.F. Leonen.

45 Id. at 59. Emphasis in the original.

encumbrance of the conjugal property prior to the liquidation. But the Court did not apply Article 130, citing Article 105 thereof which states that the provisions of the Family Code shall be "without prejudice to vested rights already acquired in accordance with the Civil Code or other laws." Thereafter, the Court indicated that an implied ordinary co-ownership among Flora's heirs governed the conjugal properties pending liquidation and partition, with Anastacio owning one-half of the original conjugal partnership as his share plus his share as Flora's heir in the conjugal properties, but the same was an undivided interest. Invoking Article 493 of the Civil Code, the Court mentioned that Anastacio, as a co-owner, had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners.[46]

In fine, the Court held in *Domingo*:

> x x x Consequently, Anastacio's sale to the spouses Molina without the consent of the other co-owners was **not totally void**, for Anastacio's rights or a portion thereof were thereby effectively transferred, making the spouses Molina a co-owner of the subject property to the extent of Anastacio's interest. This result conforms with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).[47] (Emphasis and underscoring supplied)

Finally, in *Uy v. Estate of Vipa Fernandez*[48] (*Uy*) which also involved the sale of the undivided interest of the surviving spouse in a conjugal property, the Court merely adopted the ruling in *Domingo*, thus:

> Levi and Vipa were married in March 24, 1961 and in the absence of a marriage settlement, the system of conjugal partnership of gains governs their property relations. It is presumed that the subject property is part of the conjugal properties of Vipa and Levi considering that the same was acquired during the subsistence of their marriage and there being no proof to the contrary.
>
> When Vipa died on March 5, 1994, the conjugal partnership was automatically terminated. Under Article 130 of the Family Code, the conjugal partnership property, upon its dissolution due to the death of either spouse, should be liquidated either in the same proceeding for the settlement of the estate of the deceased or, in the absence thereof, by the surviving spouse within one year from the death of the deceased spouse. That absent any liquidation, any disposition or encumbrance of the conjugal partnership property is void. x x x
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> x x x x

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46 Id. at 56-59.

47 Id. at 59.

48 G.R. No. 200612, April 5, 2017, 822 SCRA 382. Rendered by the Third Division; penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Presbitero J. Velasco, Jr., Lucas P. Bersamin, Francis H. Jardeleza, and Noel G. Tijam.

> Article 130 of the Family Code is applicable to conjugal partnership of gains already established between the spouses prior to the effectivity of the Family Code pursuant to Article 105 thereof x x x.
>
> x x x x
>
> Rafael bought Levi's one-half share in the subject property in consideration of P500,000.00 as evidenced by the Deed of Sale dated December 29, 2005. At that time, the conjugal partnership properties of Levi and Vipa were not yet liquidated. **However, such disposition, notwithstanding the absence of liquidation of the conjugal partnership properties, is <u>not necessarily void</u>.**
>
> It bears stressing that under the regime of conjugal partnership of gains, the husband and wife are co-owners of all the property of the conjugal partnership. Thus, upon the termination of the conjugal partnership of gains due to the death of either spouse, the surviving spouse has an actual and vested one-half undivided share of the properties, which does not consist of determinate and segregated properties until liquidation and partition of the conjugal partnership. With respect, however, to the deceased spouse's share in the conjugal partnership properties, an implied ordinary co-ownership ensues among the surviving spouse and the other heirs of the deceased.
>
> Thus, upon Vipa's death, one-half of the subject property was automatically reserved in favor of the surviving spouse, Levi, as his share in the conjugal partnership. The other half, which is Vipa's share, was transmitted to Vipa's heirs — Grace Joy, Jill Frances, and her husband Levi, who is entitled to the same share as that of a legitimate child. The ensuing implied co-ownership is governed by Article 493 of the Civil Code x x x.
>
> x x x x
>
> Although Levi became a co-owner of the conjugal partnership properties with Grace Joy and Jill Frances, he could not yet assert or claim title to any specific portion thereof without an actual partition of the property being first done either by agreement or by judicial decree. Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing.
>
> Nevertheless, a co-owner could sell his undivided share; hence, Levi had the right to freely sell and dispose of his undivided interest. Thus, the sale by Levi of his one-half undivided share in the subject property was **<u>not necessarily void</u>**, for his right as a co-owner thereof was effectively transferred, making the buyer, Rafael, a co-owner of the subject property. It must be stressed that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).[49] (Emphasis and underscoring supplied)

The Court's ruling in *Heirs of Go*, *Domingo*, and *Uy* to the effect that the undivided share of the disposing co-owner is effectively transferred to

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[49] Id. at 395-398. Citations omitted.

the buyer based on the maxim *quando res non valet ut ago, valeat quantum valere potest* can be traced to the 1944 *en banc* case of *Lopez v. Vda. de Cuaycong, et al.*[50] (*Lopez*), to wit:

> On the first question, we believe the consent of the three daughters above named was not necessary to the validity of the sale in question. Each co[-]owner may alienate his undivided or ideal share in the community.
>
> Articles 392[51] and 399[52] of the [old] Civil Code provide:
>
> "Article 392. There is co-ownership whenever the ownership of a thing or of a right belong undivided to different persons.
>
> x x x x
>
> "Article 399. Each one of the co-owners shall have the absolute ownership of his part and that of the fruits and profits pertaining thereto, and he may therefore sell, assign or mortgage it, and even substitute another person in its enjoyment, unless personal rights are involved. But the effect of the alienation or mortgage with respect to the co-owners shall be limited to the share which may be allotted to him in the division upon the termination of the co-ownership."
>
> Manresa has the following to say on this subject:
>
> x x x x
>
> "Each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract, because until the division is effected, such share is not concretely determined. The rights of the co-owners are, therefore, as absolute as dominion requires, because they may enjoy and dispose of the common property, without any limitation other than that they should not, in the exercise of their right, prejudice the general interest of the community, and *possess, in addition, the full ownership of their share, which they may alienate, convey or mortgage; which share, we repeat, will not be certain until the community ceases.* The right of ownership, therefore, as defined in Art. 348 of the present Civil Code, with its absolute features and its individualized character, in exercised in co-ownership, with no other differences between sole and common ownership than that which is rightly established by the Portuguese Code (Arts. 2175 and 2176), when it says 'that the sole owner exercises his rights exclusively, and the co-owner exercises them jointly with the other co-owners'; but we shall add, *to each co-owner pertains individually, over his*

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50 74 Phil. 601 (1944).
51 CIVIL CODE, Art. 484.
52 Id., Art. 493.

> *undivided share, all the rights of the owner*, aside from the use and enjoyment of the thing, which is common to all the co-owners." x x x

Manresa further says that in the alienation of his undivided or ideal share, a co-owner does not need the consent of the others. (Vol. 3, pp. 486-487, 3rd Ed.)

Sanchez Roman also says ("Estudios de Derecho Civil", vol. 3, pp. 174-175):

> x x x x

> "Article 399 shows the essential integrity of the right of each co-owner in the *mental* portion which belongs to him in the co-ownership or community.

> x x x x

> "To be a co-owner of a property does not mean that one is deprived of every recognition of the disposal of the thing, of the free use of his right within the circumstantial conditions of such juridical status, nor is it necessary, for the use and enjoyment, or the right of free disposal, that the previous consent of all the interested parties be obtained. x x x"

According to Scaevola (Codigo Civil, vol. 7, pp. 154-155):

> x x x x

> "2nd. *Absolute right of each co-owner with respect to his part or share*.—With respect to the latter, each co-owner is the same as an individual owner. He is a singular owner, with all the rights inherent in such condition. The share of the co-owner, that is, the part which ideally belongs to him in the common thing or right and is represented by a certain quantity, is his and he may dispose of the same as he pleases, because it does not affect the right of the others. Such quantity is equivalent to a credit against the common thing or right, and is the private property of each creditor (co-owner). The various shares ideally signify as many units of thing or right, pertaining individually to the different owners; in other words, a unit for each owner."

It follows that the consent of the three daughters Maria Cristina, Josefina and Anita Cuaycong to the sale in question was not necessary.

x x x x

The second question is: What rights did the intervenor acquire in this sale? The answer is: the same rights as the grantors had as co-owners in an ideal share equivalent in value to 10,832 square meters of the hacienda. No specific portion, physically identified, of the hacienda has been sold, but only an abstract and undivided share equivalent in value to 10,832 square meters of the common property. What portion of the

hacienda has been sold will not be physically and concretely ascertained until after the division. This sale is therefore subject to the result of such partition, but this condition does not render the contract void, for an alienation by the co-owner of his ideal share is permitted by law, as already indicated. If in the partition this lot 178-B should be adjudicated to the intervenor, the problem would be simplified; otherwise, the sellers would have to deliver to the intervenor another lot equivalent in value to Lot No. 178-B. Incidentally, it should be stated that according to Rule 71, sec. 4, of the new Rules of Court, regarding partition of real estate, the commissioners on partition shall set apart the real property "to the several parties in such lots or parcels as will be *most advantageous and equitable, having due regard to the improvements*, situation and quality of the different parts thereof." x x x Consequently, without deciding that the commissioners on partition must assign Lot 178-B to intervenor, we deem it proper to state that if in the partition proceedings, the commissioners should set apart said lot to intervenor, they would be acting within the letter and spirit of the provision, just quoted, of Rule 71, sec. 4; and that they will probably make such adjudication.

In the Sentence of December 29, 1905, the Supreme Tribunal of Spain declared that the alienation, by a co-owner, of either an abstract or a concrete part of the property owned in common does not mean the cessation of the ownership. Said sentence held:

x x x x

> "The first assignment of error cannot be sustained, because such legal status does not disappear, nor is it impaired, with respect to the co-owners between themselves simply because both or either of them executed acts which may be considered as beyond the powers inherent in administration, the only powers which by mutual agreement had been conferred as to certain properties, inasmuch as although every co-owner may alienate, grant, or mortgage the ownership of his share, the effect of such alienation is limited, with reference to the co-owners, to the portion which may be adjudicated to him later, according to Art[.] 399 of the Civil Code, and does not imply the cessation of the community, whether the sale refers to an abstract part of the property, or *to a concrete and definite part thereof*, because though in the latter case the form and conditions of the subsequent partition may be effected, nevertheless, the juridical situation of the collective owners is not in any way altered so long as the partition of the common property is not carried out, which is declared not to have taken place." x x x

Applying the above doctrine to the instant case, it cannot be said that the sale of Lot 178-B to the intervenor had the effect of partitioning the hacienda and adjudicating that lot to the intervenor. It merely transferred to the intervenor an abstract share equivalent in value to 10,832 square meters of said hacienda, subject to the result of a subsequent partition. The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. "Quando res non valet

> ut ago, valeat quantum valere potest." ("When a thing is of no force as I do it, it shall have as much force as it can have.") It is plain that Margarita G. Vda. de Cuaycong and her children of age intended to sell to intervenor no more than what they could legally and rightfully dispose of, and as they could convey only their ideal share, equivalent in value to 10,832 square meters of the hacienda, that ideal share alone must be deemed to have been the subject-matter of the sale in question. They are presumed to know the law that before partition, conventional or judicial, no co[-]owner may dispose of any physically identified portion of the common property; and that any conveyance by a co[-]owner is subject to the result of a subsequent partition. This interpretation of the contract does no harm to the minor daughters, as the sale in question is subject to the result of the partition which intervenor may demand.
>
> As a successor in interest to an abstract or undivided share of the sellers, equivalent in value to 10,832 square meters of the property owned in common, the intervenor has the same right as its predecessors in interest to demand partition at any time, according to article 400[53] of the [old] Civil Code x x x[.][54] (Italics in the original)

With respect to *Uy*, the Court notes that it applied Article 130 of the Family Code since the concerned spouse died during the effectivity of the Family Code while *Heirs of Go* and *Domingo* did not apply the said Article because the death of the spouse occurred during the effectivity of the Civil Code, or prior to August 3, 1988, and Article 130's retroactive application would purportedly impair vested rights under the Civil Code. According to *Heirs of Go*: "such a declaration [of nullity] prejudices the rights of Servacio [(the buyer)] who had already acquired the shares of Protacio, Sr. and Rito [(the surviving spouse and a legitimate son of the deceased spouse)] in the

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53 CIVIL CODE, Art. 494.

54 *Lopez v. Vda. de Cuaycong, et al.*, supra note 50, at 603-609. The Court notes that in the 1968 *en banc* case of *Estoque v. Pajimula*, No. L-24419, July 15, 1968, 24 SCRA 59, where a co-owner sold a specific one-third portion of the co-owned property without the consent of the other two co-owners and afterwards the selling co-owner became the sole owner thereof, the Court pronounced that while on the date of the sale, "said contract may have been ineffective, for lack of power in the vendor to sell the specific portion described in the deed, the transaction was validated and became fully effective when the next day x x x the vendor x x x acquired the entire interest of her remaining co-owners x x x and thereby became the sole owner [thereof]." The Court cited Article 1434 of the Civil Code, which provides that "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee," as justification. As to the effect of the sale of specific one-third portion prior to the seller's acquisition of the shares of the other co-owners, the Court observed that granting the seller could not have sold that particular portion of the lot owned by her and her two brothers, by no means did it follow that the seller intended to sell her 1/3 undivided interest in the property as there was nothing in the deed of sale to justify the inference and pursuant to the maxim, *ab posse ad actu non valet illatio.* The ruling of the Court in *Estoque v. Pajimula* is not necessarily inconsistent with the Court's statement in *Lopez* that the sale of a concrete portion of the co-owned property does not render the sale void based on the principle that the binding force of a contract must be recognized as far as it is legally possible to do so, following the maxim: *Quando res non valet ut ago, valeat quantum valere potest.* The peculiar circumstance in *Estoque v. Pajimula* that the selling co-owner subsequently acquired the sole ownership of the property apparently impelled the Court to treat the previous sale of the specific portion ineffective so that it could be validated upon the acquisition by the seller of the interests of the other co-owners. Whereas, if the co-ownership subsists after the sale by a co-owner of a specific portion of the co-owned property without the consent of the others, the sale will be recognized as valid only up to the extent of the undivided share of the disposing co-owner, and in addition to the maxim: *Quando res non valet ut ago, valeat quantum valere potest*, estoppel will bar the seller from disavowing the sale to the prejudice of the buyer who relied upon the former's action.

property subject of the sale."[55] But, in *Heirs of Go*, the disputed sale happened in 1999 such that Servacio's right as co-owner was acquired during the effectivity of the Family Code. In *Domingo*, the disputed transaction happened in 1978. That being the situation, the buyer of the surviving spouse's undivided interest became co-owner of the subject property and the buyer's vested right would be prejudiced if Article 130 would be applied retroactively.

However, it must likewise be noted that what was vested in the buyer regarding a disposition prior to the effectivity of the Family Code is merely the ownership of the undivided interest of the surviving spouse in the conjugal property, consisting of (1) the surviving spouse's half interest in the conjugal property as his or her conjugal share (because death terminated the marriage) and (2) the surviving spouse's share as legal heir in the deceased spouse's conjugal share (the other half interest therein), that was vested in his favor by succession. It is that undivided interest that the surviving spouse can freely dispose of without need of the other co-owners' consent. As to the undivided shares of the other co-owners, the disposition by the surviving spouse thereof is not valid. And the same holds true with respect to a similar disposition made by the surviving spouse after the effectivity of the Family Code.

If the right being prejudiced in the retroactive application of Article 130 is the right of the surviving spouse as a co-owner of the conjugal property, which vested when the marriage was dissolved by the death of the other spouse, the prejudice could result only when the right is exercised. Thus, the date of the spouse's death is not the reckoning point. Rather, the relevant date in the retroactive application of Article 130 is when the questioned disposition involving the unliquidated conjugal property is made.

As demonstrated in *Uy*, the result is the same whether Article 130 is retroactively applied or not. The disposition by the surviving spouse despite non-observance of the requirement on the liquidation of the terminated marriage property within one year from the death of his or her spouse is recognized as one that is not totally or necessarily void. As stated earlier, the disposition is recognized as valid to the extent of the undivided share of the disposing surviving spouse in *Domingo* and *Uy*, or the undivided shares of the disposing surviving spouse and legitimate child in *Heirs of Go*. The proviso on nullity under Article 130 is therefore more appropriately applied only insofar as the disposition affects the portion of the conjugal property pertaining to the non-disposing co-heirs.

The Court further notes that in *Domingo* and *Uy*, the subject disposition or alienation concerned the very share or interest of the surviving spouse over which, according to Article 493 of the Civil Code, he or she has **full ownership**. Thus, as Article 493 puts it, the disposition should be

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[55] *Heirs of Protacio Go, Sr. and Marta Barola v. Servacio*, supra note 42, at 17.

perfectly valid "[b]ut the effect of the alienation x x x, 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."

The Court now discusses how Article 130 should be interpreted given the factual milieu of this case.

Was the consent of Perla, Teodulo's second wife, necessary for the validity of the sale of the subject property by Teodulo to Apolinario?

The third paragraph of Article 130 of the Family Code provides that a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage should the surviving spouse contract a subsequent marriage without liquidating the conjugal partnership property, thus:

> x x x x
>
> Should the surviving spouse contract a subsequent marriage without compliance with the foregoing requirements, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. (n)

When a complete or total separation of property governs the property relations, no portion of the properties of the marriage will be common, and the fruits of the properties of either spouse, as well as his or her earnings from any profession, work or industry, will belong to him or her as exclusive property.[56] Each spouse owns the property which he or she brings to the marriage or which he or she may acquire during the marriage by onerous or gratuitous title.[57]

The ownership rights of each spouse in a regime of separation of property are provided in Article 145 of the Family Code, which states:

> ART. 145. Each spouse shall own, dispose of, possess, administer and enjoy his or her own separate estate, without need of the consent of the other. To each spouse shall belong all earnings from his or her profession, business or industry and all fruits, natural, industrial or civil, due or received during the marriage from his or her separate property. (214a)

Given that complete separation of property governed the subsequent marriage of Teodulo and Perla, the 9/16 undivided share or interest in the subject property of Teodulo belonged to him and remained with him as his separate property when he married Perla. Thus, he could have disposed of this without need of consent from Perla.

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56 Arturo M. Tolentino, supra note 36, at 489.
57 Id. at 490.

Is this right of disposition by the surviving spouse under Article 145 of the Family Code, which is consistent with Article 493 of the Civil Code insofar as the right of alienation by a co-owner of his or her interest or share in the co-ownership is concerned, abrogated by the provision of Article 130 of the Family Code which provides that "any disposition or encumbrance involving the conjugal partnership property of the terminated marriage shall be void" if no liquidation of the terminated marriage property is made upon the lapse of one year from the death of the deceased spouse?

While there appears to be a seeming conflict in the cited provisions of the Family Code and the Civil Code, the provisions are not irreconcilable. As discussed above, the disposition or encumbrance is valid only to the extent of the share or interest of the surviving spouse in the terminated marriage property, and cannot in no way bind the shares or interests therein of the other heirs of the deceased spouse.

The above formulation, which recognizes as valid the disposition by the surviving spouse of his separate property — equivalent to his undivided share in the conjugal property with his deceased wife and his share as legal heir in the latter's estate — pursuant to Article 145 of the Family Code despite the proviso in Article 130 to the effect that such disposition is considered void, is consistent with *Lopez* and supported by *Heirs of Go*, *Domingo* and *Uy*.

While the phrases used in *Heirs of Go*, *Domingo* and *Uy* to describe the effect of the disposition which is non-compliant with the requirements of Article 130, namely, "not necessarily void," "[not] entirely void," "not null and void," "not totally void," the Court still recognized therein that the surviving spouse's rights in the subject property are effectively transferred to the buyer, making the latter a co-owner of the property to the extent of the surviving spouse's undivided interest therein, and a trustee of the remaining portion of the property for the benefit of the deceased spouse's other heirs, the *cestui que trustent* or *cestui que trust*. In this light, if the disposition is made after the remarriage of the surviving spouse during the effectivity of the Family Code, then with more reason that the disposition is not void because the surviving spouse's undivided interest in the terminated marriage property is already recognized as his separate property, which he can freely dispose of under Article 145 of the Family Code.

The disposition or encumbrance of the entire property is valid only if the other heirs or co-owners give their consent thereto pursuant to Article 491 of the Civil Code, which provides that none of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. Alteration includes any act of ownership or strict dominion such as alienation of the

thing by sale or donation.[58] However, if the widow or widower alone survives the deceased spouse, he or she becomes the sole owner of the latter's estate pursuant to Article 995 of the Civil Code, which states:

> ART. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces, should there be any, under Article 1001. (946a)

In this scenario, the surviving spouse becomes the sole owner of the conjugal property and the proviso of Article 130 of the Family Code necessarily yields to Article 145.

Also, there is no doubt that the disposition by the surviving spouse of his undivided interest in the co-ownership created by the death of the other spouse is valid pursuant to Article 493 of the Civil Code, subject to the outcome of the partition, and because that undivided interest is separate property of the surviving spouse in case of remarriage, its disposition without the consent of the subsequent spouse is valid pursuant to Article 145 of the Family Code.

Consequently, the determination of the effect of a questioned disposition by the surviving spouse despite non-compliance with the requirements under Article 130 of the Family Code depends not so much on whether this provision can be retroactively applied, but on the correct application of Article 493 of the Civil Code (prior to remarriage of the surviving spouse), and Article 145 of the Family Code by itself or in conjunction with Article 493 of the Civil Code (after the latter's remarriage during the effectivity of the Family Code).

Taking into consideration the foregoing discussion, the CA erred when it ruled that the property regime governing the marriage between Perla and Teodulo is absolute community.[59] Accordingly, it also erred when it applied the exclusion provided in Article 92[60] of the Family Code with respect to property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as income thereof.

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[58] See Hector S. De Leon and Hector M. De Leon, Jr., COMMENTS AND CASES ON PROPERTY (Fourth Edition 2003), p. 234.

[59] *Rollo*, p. 46.

[60] ART. 92. The following shall be excluded from the community property:

(1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;

(2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;

(3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property. (201a)

While the CA was correct in stating that the purpose of the exclusion is to protect the rights and interests of the legitimate descendants by the first marriage over the property and to ensure that the children born of the prior marriage are not deprived of their share in the properties of their parents,[61] its pronouncement that in the instant case the exclusion does not apply considering that "Perla x x x recognizes the co-ownership between Teodulo and his children with Perpetua, as seen in the extrajudicial settlement document[, and thus,] there is no risk of depriving them of their rights over the conjugal property of Teodulo and Perpetua"[62] is misguided.

Perla's recognition of the co-ownership between Teodulo and his children with Perpetua does not confer any additional right in their favor nor is it necessary to confer upon them their right to succeed from Perpetua because as far as they are concerned their right to inherit from the estate of Perpetua was vested upon the latter's death. As to Teodulo's conjugal share in the subject property, that is guaranteed as his separate property under Article 145 in relation to Article 130 of the Family Code.

In the same vein, petitioners' invocation of Article 92 to justify that the subject property is excluded from the community property of Teodulo and Perla, and is partly Teodulo's separate property, which he could alienate without need of Perla's consent, is incorrect. As to their invocation of Article 103, which applies to community property, it is likewise incorrect because the property regime of Teodulo and Perpetua was the conjugal partnership of gains. Thus, the applicable provision is Article 130 of the Family Code.

The Court need not waste its time to discuss the arguments of respondents as they are clearly egregiously wrong.

The Court will now proceed to determine whether the sale of the subject property by Teodulo to Apolinario, without the consent of Perla and his other seven co-owners, is valid.

Before the question can be properly addressed, the nature of the transaction over the subject property between Teodulo and Apolinario must be examined.

It will be recalled that on September 23, 1994, Teodulo (respondents' predecessor-in-interest) sold to Apolinario (petitioners' predecessor-in-interest) a parcel of land with an approximate area of 7,768 square meters for the total purchase price of ₱150,000.00. The parties agreed that Apolinario would pay ₱40,000.00 as initial payment and the rest was to be paid in installments. The receipt of the initial payment was acknowledged by Teodulo in a handwritten receipt also dated September 23, 1994. Thereafter,

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61 *Rollo*, p. 46.
62 Id.

Apolinario's family occupied the property. The second installment in the amount of ₱40,000.00 was paid by Apolinario on August 14, 1996, and another installment was made on October 20, 1999 in the amount of ₱40,000.00, as reflected in the handwritten receipt which also stated that "[u]pon payment of the balance in the amount of Thirty Thousand Pesos ([₱]30,000.00), I [(referring to Teodulo)] will cause the transfer of the title of my land in his [(referring to Apolinario)] name."[63] Of the ₱150,000.00 purchase price, Apolinario was able to pay ₱120,000.00 or 80% thereof. However, on December 22, 2000, Teodulo died before the balance of the purchase price could be paid.

Based on these facts, the transaction between Teodulo and Apolinario is a contract of sale.

Article 1458 of the Civil Code defines a contract of sale as a contract where one of the parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay therefor a price certain in money or its equivalent. From the perspective of the definition of obligation under Article 1156 as "a juridical necessity to give, to do or not to do," the prestations of the seller are: (1) to transfer the ownership of a determinate thing and (2) to deliver that determinate thing while the corresponding prestation of the buyer is to pay therefor a price certain in money or its equivalent. Given that the seller is obligated to transfer not only the ownership of the determinate thing sold but also to deliver the thing, the seller may withhold ownership of the thing sold despite its delivery to the buyer. This is expressly allowed under Article 1478 of the Civil Code, which states: "The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price." Without such stipulation, ownership of the thing sold is transferred to the buyer upon its delivery in consonance with Article 1477, which provides: "The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof."

In *San Lorenzo Development Corporation v. Court of Appeals*,[64] the Court discussed the nature, elements, perfection and consummation of a contract of sale, *viz.*:

> Sale, being a consensual contract, is perfected by mere consent and from that moment, the parties may reciprocally demand performance. The essential elements of a contract of sale [are]: (1) consent or meeting of the minds, that is, to transfer ownership in exchange for the price; (2) object certain which is the subject matter of the contract; (3) cause of the obligation which is established.
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> The perfection of a contract of sale should not, however, be confused with its consummation. In relation to the acquisition and transfer of ownership, it should be noted that sale is not a mode, but merely a title.

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63 Id. at 78, 81.

64 G.R. No. 124242, January 21, 2005, 449 SCRA 99.

> A mode is the legal means by which dominion or ownership is created, transferred or destroyed, but title is only the legal basis by which to affect dominion or ownership. Under Article 712 of the Civil Code, "ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition." Contracts only constitute titles or rights to the transfer or acquisition of ownership, while delivery or tradition is the mode of accomplishing the same. Therefore, sale by itself does not transfer or affect ownership; the most that sale does is to create the obligation to transfer ownership. It is tradition or delivery, as a consequence of sale, that actually transfers ownership.
>
> Explicitly, the law provides that the ownership of the thing sold is acquired by the vendee the moment it is delivered to him in any of the ways specified in Article 1497 to 1501. The word "delivered" should not be taken restrictively to mean transfer of actual physical possession of the property. The law recognizes two principal modes of delivery, to wit: (1) actual delivery; and (2) legal or constructive delivery.
>
> Actual delivery consists in placing the thing sold in the control and possession of the vendee. Legal or constructive delivery, on the other hand, may be had through any of the following ways: the execution of a public instrument evidencing the sale; symbolical tradition such as the delivery of the keys of the place where the movable sold is being kept; *traditio longa manu* or by mere consent or agreement if the movable cannot yet be transferred to the possession of the buyer at the time of the sale; *traditio brevi manu* if the buyer already had possession of the object even before the sale; and *traditio constitutum possessorium*, where the seller remains in possession of the property in a different capacity.[65]

Based on the elements of sale, the transaction between Teodulo and Apolinario is indeed a contract of sale. There was a meeting of the minds: Teodulo agreed to transfer ownership of and to deliver the subject property and Apolinario agreed to pay the purchase price of ₱150,000.00. The object is the subject property, which is determinate and licit. For Teodulo, the cause or consideration was the receipt of the payment of the purchase price while for Apolinario, it was the transfer of ownership and delivery of the subject property to him.

Not only was the sale between Teodulo and Apolinario perfected, it was partially consummated. Teodulo had substantially complied with his prestations as the seller when he placed the subject property in the control and possession of Apolinario without reserving its ownership. What was left was the transfer of the certificate of title covering the subject property from Teodulo to Apolinario. Apolinario had paid a total of ₱120,000.00 or 80% of the purchase price of ₱150,000.00 agreed upon. As to the remaining ₱30,000.00, the handwritten receipt dated October 20, 1999 stated that "[u]pon payment of the balance in the amount of Thirty Thousand Pesos ([₱]30,000.00), I [(referring to Teodulo)] will cause the transfer of the title of my land in his [(referring to Apolinario)] name."[66]

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65 Id. at 113-114. Citations omitted.

66 See note 63.

As control and possession of the subject property had earlier been ceded by Teodulo to Apolinario after the payment of the initial ₱40,000.00 on September 23, 1994, without any stipulation that ownership in the subject property would not pass to Apolinario until he had fully paid the price, the quoted proviso in the October 20, 1999 receipt had no effect on the ownership of the subject property having already been transferred to Apolinario by actual delivery.

The proviso is simply a reservation of a portion of the purchase price to ensure the transfer of the certificate of title from Teodulo to Apolinario. Sale being a reciprocal obligation, both Teodulo and Apolinario stood to benefit from the proviso. Teodulo would not need to spend his own funds to effect the transfer of title and Apolinario could be assured of the transfer of title by making sure that the remaining ₱30,000.00 would be spent for that purpose.

Despite the existence of a valid contract of sale over the subject property between Teodulo and Apolinario, the sale is effective only to the extent of the share or interest of Teodulo therein pursuant to Article 493 of the Civil Code which, as discussed above, is 9/16 of the subject property.

The Court, in applying Article 493 of the Civil Code to a situation wherein the entire co-owned property has been disposed by a co-owner without the consent of the other co-owners, has this to say in *Bailon-Casilao v. Court of Appeals*:[67]

> The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:
>
> > Art. 493. Each co-owner shall have *the full ownership of his part* and of the fruits and benefits pertaining thereto, and he may therefore *alienate, assign or mortgage* it and even substitute another person in its enjoyment, except when personal rights are involved. *But the effect of the alienation or 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.* [Italics supplied.]
>
> As early as 1923, this Court has ruled that even 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 [Punsalan v. Boon Liat, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [Ramirez v. Bautista, 14 Phil. 528 (1909)]. x x x[68]

This pronouncement of the Court was reiterated in *Spouses Del Campo v. Court of Appeals*,[69] to wit:

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67 No. L-78178, April 15, 1988, 160 SCRA 738.
68 Id. at 744-745.
69 G.R. No. 108228, February 1, 2001, 351 SCRA 1.

> x x x Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common.
>
> x x x We have ruled many times that even 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. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner will only transfer the rights of said co-owner to the buyer, thereby making the buyer a co-owner of the property.[70]

Furthermore, *Lopez* supports the validity of the disposition to the extent of the undivided share of the disposing co-owner despite the lack of consent from the other co-owners.

Therefore, while Teodulo sold the entire subject property which he owned in common with his seven children, the sale only affected his undivided share and Apolinario acquired only Teodulo's 9/16 abstract share in the property held in common. While Teodulo could dispose of his 9/16 undivided interest therein by virtue of Article 145 of the Family Code because that pertained to him as his separate property in his subsequent marriage to Perla under Article 130 of the Family Code, his disposition of the entire subject property cannot be entirely valid as his right to dispose as a co-owner is limited by Article 493 of the Civil Code to the share or part pertaining to him.

In view of the fact that 80% of the purchase price had been paid, Jesus, to whom the subject property was adjudicated by virtue of the extrajudicial settlement of the estates of Teodulo and Perpetua, is no longer entitled to collect the remaining balance of ₱30,000.00. The ₱120,000.00 is deemed to be sufficient consideration of 9/16 of the subject property because 9/16 thereof, given its total area of 7,768 square meters, is equivalent to approximately 4,369.5 square meters or a little more than half of the subject property's area.

Given that: Apolinario had already paid a total of ₱120,000.00 or 80% of the purchase price of ₱150,000.00 agreed upon; such 80% payment would be equivalent to about 6,214 square meters, given that the total area of the subject property is 7,768 square meters; the sale can only be recognized to the extent of 9/16 or 56.25% of its area or 4,369.5 square meters; petitioners' prayer that the sale be recognized valid to the extent of the conjugal share of Teodulo plus his "share[71] x x x [i]n the other half of the property in

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[70] Id. at 7-8, citing *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, G.R. No. 124262, October 12, 1999, 316 SCRA 502, 509.

[71] Petitioners claim that 1/5 of the other half of the subject property is Teodulo's share in the estate of Perpetua, which is her conjugal half. However, they have not explained how they arrived at the said fraction. 1/5 presupposes that Teodulo and Perpetua had 4 children. They had 7 children. There are 8

question;"[72] and the length of time that has transpired from the sale in 1994 to the present, the Court deems it just and equitable to recognize the sale between Teodulo and Apolinario valid to the extent of 9/16 of the subject property and the purchase price thereof has been fully discharged.

Upon the death of Apolinario, pursuant to Article 777 of the Civil Code, ownership to the extent of 9/16 of the subject property devolved pro-indiviso upon his heirs, petitioners herein, by virtue of succession. Consequently, Jesus and the heirs of Apolinario are pronounced co-owners of the subject property now covered by TCT No. 22388 in the following proportion: Jesus to the extent of 7/16 and petitioners to the extent of 9/16.

In the words of the Court in *Heirs of Go*, *Domingo*, and *Uy*, the sale by Teodulo of the subject property to Apolinario was **not necessarily or totally or entirely void**, for his right as a co-owner to the extent of 9/16 thereof was effectively transferred, making the buyer, Apolinario, a co-owner of the subject property to that extent and a trustee for the benefit of the co-heirs of Teodulo, his seven children, in respect of their combined 7/16 interest therein that was not validly sold to Apolinario. Upon Apolinario's death, petitioners stepped into his shoes and became co-owners together with Jesus of the subject property.

WHEREFORE, the Petition is hereby **PARTIALLY GRANTED**. Accordingly, the Decision dated November 11, 2016 and the Resolution dated April 12, 2017 of the Court of Appeals in CA-G.R. CV No. 106010 are **REVERSED** and **SET ASIDE**. Judgment is hereby rendered in favor of petitioners as follows:

(1) The Heirs of Apolinario Caburnay, namely, Lydia Caburnay, Letecia Navarro, Evangeline Cruz, Jerry Caburnay, Zenaida C. Ancheta, Liwayway C. Watan, Gloria Gusilan, Apolinario Caburnay, Jr. and Maelin Caburnay are declared and recognized co-owners, share and share alike, of the property covered by Transfer Certificate of Title No. 22388 to the extent of 9/16 thereof;

(2) Jesus Sison is declared and recognized co-owner of the said property to the extent of 7/16 thereof; and

(3) Upon finality of this Decision, the proper Register of Deeds is directed to enter and register this Decision in the primary entry book, annotate the same in Transfer Certificate of Title No. 22388, and issue a new Transfer Certificate of Title in lieu of Transfer Certificate of Title No. 22388 in the names of the parties mentioned in (1) and (2) above as co-owners in the proportions indicated therein.

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respondents and one of them is Perla, Teodulo's second wife. Thus, the correct fraction, as computed, is 9/16 [1/2 or 8/16 plus 1/8(1/2) or 1/16].

[72] *Rollo*, p. 36.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice