Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

VIRGINIA Y. GOCHAN, FELIX Y. GOCHAN III, LOUISE Y. GOCHAN, ESTEBAN Y. GOCHAN, JR., and DOMINIC Y. GOCHAN, Petitioners,	**G.R. No. 182314**
	Present:
	VELASCO, JR., *J.*, *Chairperson,*
	PERALTA,
	ABAD,
	MENDOZA, and
- *versus* -	LEONEN, *JJ.*
	Promulgated:
CHARLES MANCAO, Respondent.	**November 13, 2013**

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D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the June 28, 2007 Decision[1] and March 10, 2008 Resolution,[2] of the Court of Appeals (CA) in CA-G.R. SP No. 71312, which annulled and set aside the judgment based on compromise[3] dated November 27, 1998 of the Cebu City Regional Trial Court Branch (RTC) 17.

The factual antecedents are as follows:

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1 Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Antonio L. Villamor concurring; *rollo*, pp. 7-19.

2 *Id.* at 21-24.

3 *Id.* at 127-129.

Felix Gochan (Gochan), Amparo Alo (Alo), and Jose A. Cabellon were co-owners of Lot Nos. 1028 and 1030 of Subdivision Plan Psd-21702 located in Cebu City, Cebu.[4] Petitioners are successors-in-interest of Gochan, while respondent bought Lot Nos. 1028-D-1, 1028-D-3, 1028-D-4, and 1028-E covered by Transfer Certificate of Title (TCT) Nos. 139161-139164[5] from the children of Angustias Velez and Eduardo Palacios,[6] who, together with Jose, Jesus, Carmen, and Vicente, all surnamed Velez,[7] acquired Lot Nos. 1028-D and 1028-E from Alo.

Sometime in 1998, petitioners, including Mae Gochan, filed a case for legal redemption of Lot Nos. 1028-DD, 1028-EE, 1028-FF, 1028-GG, 1028-HH, 1028-II, 1028-JJ, 1028-KK, 1028-LL, 1028-MM, 1028-NN, 1028-OO, 1028-PP, 1028-QQ, 1028-RR, 1028-SS, 1028-TT, 1028-UU, 1028-VV, 1030-I of Subdivision Plan Psd-21702 covered by TCT Nos. 2318 to 2337.[8] The TCTs are registered under the names of Gochan (married to Tan Nuy), Alo (married to Patricio Beltran), and Genoveva S. De Villalon (married to Augusto P. Villalon), who is the successor-in-interest of Cabellon. The case, which was docketed as Civil Case No. CEB-22825 and raffled before Cebu City RTC Branch 17, was brought against the spouses Bonifacio Paray, Jr. and Alvira Paray (sister of respondent),[9] who purchased the lots from the heirs of Alo. On November 20, 1998, the parties executed a Compromise Agreement,[10] whereby, for and in consideration of the amount of Php650,000.00, the Spouses Paray conveyed to petitioners and Mae Gochan all their shares, interests, and participation over the properties. On November 27, 1998, the court approved the agreement and rendered judgment in accordance with its terms and conditions.[11] The decision was annotated on December 29, 1999 in the subject TCTs as Entry No. 188688.

Claiming that the legal redemption adversely affected Lot Nos. 1028-D-1, 1028-D-3, 1028-D-4, and 1028-E, respondent filed a suit before the CA for "Declaration of Nullity of Final Decision and Compromise Agreement and the Registration of the Same Documents with the Register of Deeds." The petition, which impleaded as respondents the petitioners, Mae Gochan, and RTC Br. 17, alleged:

> 4. The subject matter in Civil Case No. CEB-22825 sought to be redeemed by the [petitioners] Gochans from the x x x Parays were all ROAD LOTS serving Subdivision Psd-21702 located in Lahug, Cebu City. [Respondent's] standing to question the subject compromise agreement, the decision incorporating the same, and the registration of said

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4 *Id*. at 201.
5 *Id.* at 121-124.
6 *Id.* at 198-200.
7 *Id.* at 196-197.
8 *Id.* at 133-192.
9 *Id.* at 34, 213, 256.
10 *Id.* at 125-126.
11 *Id*. at 130-132.

decision with the Register of Deeds of Cebu City, arises from the fact that [respondent] is one of the subdivision lot owners in the same Subdivision Psd-21702, (LRC) Rec. No. 5988, prejudiced by the issuance and consequent registration of the said decision. x x x

x x x x

6. The compromise agreement, the questioned decision and the registration of the same are most respectfully submitted to be null and void *ab initio* for the following reasons:

   (a) The cause of action raised and settled in said Civil Case No. CEB-22825 is the alleged ownership or co-ownership by the [petitioners] of 20 lots, 1028: DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, and I all of which are ROAD LOTS serving the residents and lot owners of Subdivision Psd- 21702. x x x;

   (b) The face of all the certificates of title covering the lots appropriated by the [petitioners] as owned or co-owned by them per the questioned compromise agreement and decision, clearly indicate the same to be road lots. The certification issued by the Department of Environment and Natural Resources Land Management Services x x x shows that the same lots are road lots;

   (c) Although these road lots had been registered in the name of private individuals (who were the original registrants and who are now all deceased) the same could still not be appropriated or owned by any individual or entity as the same is beyond the commerce of men. This is provided for and/or supported among others by the following:

      (c.1) Art. 420 of the Civil Code x x x;
      (c.2) Sec. 44 of the Land Registration [Act No.] 496 x x x;
      (c.3) Section 4, PD No. 957 x x x;
      (c.4) Section 17 of PD No. 957 x x x;
      (c.5) Section 21 of PD No. 957 x x x;
      (c.6) PD 1216 amending Sec. 31 of PD 957 x x x;
      (c.7) Established jurisprudence on the matter including the cases of White Plains Association, Inc. vs. Legaspi, 193 SCRA 765 and in G.R. Case No. 55868 mentioned therein and Claudio M. Anonuevo et al. vs. Court of Appeals, et al., G.R. No. 113739, May 2, 1995 holding that road and open spaces for public use are beyond the commerce of men.

x x x x

7. One of the primary considerations why [respondent] himself bought the subdivision lots mentioned herein is the existence and perpetual passage offered by the subdivision owners respecting the subdivision road lots. As early as May 23, 1950, Amparo Alo, one of the original lot owners who caused its subdivision, had this warranty in her Deed of Absolute Sale: "I further bind myself, by these presents, not to alienate, encumber or otherwise dispose of my rights and interests in all the road lots or the subdivision roads of subdivision plan Psd-21702 and to

allow the herein VENDEES, their heirs, successors and assigns the perpetual use thereof as part of the consideration of this sale." [Respondent] is a successor-in-interest of one of the vendees in said sale having bought the same from Eduardo Palacios, Jr., one of the vendees in the May 23, 1950 sale herein mentioned. x x x.

8. The historical facts of the creation of subdivision Psd-21702 indicated the lots the ownership of which was made the subject matter of the questioned decision as Road Lots as early as August 5, 1947. x x x. The predecessors of the [petitioners] themselves indicated on the last paragraph of page 2 of [the three-page Motion dated August 5, 1947 that they filed] that the subject lots as Road lots;

9. On January 21, 1948, the Hon. Felix Martinez issued an Order respecting the motion of the predecessors of the [petitioners] for the approval of the subdivision plan 1028 and 1030 Psd-21702 pursuant to Article 44 of Act No. 496. The English translation of the Order by Hon. Judge Antonio Paraguya is quoted hereunder:

> "x x x x
> Pursuant to Article 44 of Act No. 496, let the subdivision plan of Lot [Nos.] 1028 and 1030-Psd-21702 and all other documents pertaining to said subdivision be remitted to the General Land Registration Office."
>
> x x x x

10. The approval of the subdivision plan 21702 on July 12, 1948, the appropriated road lots of which are part of, was in conformity with the report/recommendation of the Chief Surveyor of the General Land Registration Office dated February 5, 1948. And the second page of the Chief Surveyor's report upon which the decision was based said:

> "It is respectfully recommended further that, in granting what is prayed for by the above-petitioners in the instant case, they should be required to keep always open all the road lots within the above-said subdivision [so] that they will serve as thoroughfare or exit to and from every subdivision lot included therein."
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> x x x x

11. On July 12, 1948, the Hon. Judge Felix Martinez rendered a decision on the motion of the predecessors of [petitioners] to approve the subdivision plan of lot 1028 and 1030 Psd-21702 in Spanish. Said decision followed the recommendation of the Chief Surveyor quoted above. As translated by the Hon. Judge Antonio Paraguya, said decision in English, stated:

> "In conformity with the report/recommendation of the Chief Surveyor of the General Land Registration Office dated February 5, 1948, subdivision plan Psd-21702 and the corresponding technical descriptions are hereby approved."
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> x x x x

> 12. [Respondent] most respectfully emphasizes the urgent and grave necessity that the questioned compromise agreement, the final decision and its registration be declared null and void. As it is now, [petitioners] are using the same decision and compromise agreement as tools to deny other lot owners, including the [respondent] herein, from free access to and from the subdivision lots. [Petitioners] are wantonly erecting and/or placing barriers on these lots, in the guise of owning the same, in the process effectively denying [respondent] and other lot owners from using said road lots.[12]

Respondent's Reply to Answer with Counterclaim further averred:

> 7. In fact, the estate and inheritance tax return on the late Felix Gochan (answering [petitioners'] grandfather) from where answering [petitioners] derive their alleged rights over these road lots, filed in 1959, never include these lots now as their private property. Several road lots are indicated in this return but never the subject road lots. This would prove that even historically, these road lots had already been separated from the properties of the [petitioners]. The present [petitioners] could not arrogate unto themselves as their own things which their forefathers no longer owned. x x x
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> 8. In fact too, when the questioned decision was presented to the Register of Deeds for annotation on the covering certificates of title, [petitioners] failed to present any of their supposed owner's duplicate copies of said certificates. Therefore, from which does [petitioners'] supposed ownership of these road lots emanate? x x x
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> 9. Even the estate tax return on the estate of answering [petitioners'] father Esteban Gochan filed in 1997 does not include as part of his supposed estate the road lots made subject matter of the questioned compromise agreement and the resultant decision. The records of the City Assessor of Cebu City on the late Esteban Gochan's property holdings likewise do not show these road lots to be part of *(sic)*. For this, and the above mentioned indications, [petitioners] should do well in disclaiming ownership than appropriating the road lots as their own. x x x[13]

Petitioners and Mae Gochan countered that the petition states no cause of action on the grounds that: (1) respondent is not a co-owner of the properties subject matter of the legal redemption case, hence, not a real party-in-interest required to be impleaded therein; and (2) the reasons relied upon by him constitute neither extrinsic fraud nor lack of jurisdiction. Petitioners also noted that respondent is already a defendant-intervenor in *Felix Gochan and Sons Realty Corporation v. City of Cebu*, an injunction case docketed as Civil Case No. CEB-22996 and pending before Cebu RTC

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12 *Id*. at 111-117.

13 *Id*. at 257-259.

Branch 10. They argued that the filing of the petition is in violation of the rule on forum shopping and *litis pendentia*, because respondent's ultimate objective in CA-G.R. SP No. 71312 and in Civil Case No. CEB-22996 is the same − to use the alleged road lots and bar petitioners from using the same. Petitioners further contended that respondent is estopped to declare that the subject lots are beyond the commerce of men, considering that he was the highest bidder when the City of Cebu levied and sold at public auction Lot Nos. 1028-LL and 1028-NN due to non-payment of real estate taxes.[14] Moreover, petitioners asserted that respondent should have impleaded the "other lot owners" as co-petitioners because he considered them as indispensable parties based on paragraph 12 of the Petition. Finally, petitioners claimed that the petition serves no useful purpose, since to declare the nullity of the compromise agreement and the decision would not change the private character of the subject lots as the owners thereof would still be the Spouses Parays and the heirs of Beltran, who are private individuals.

Despite petitioners' defenses, the CA ruled in favor of respondent. The *fallo* of the June 28, 2007 Decision reads:

> **WHEREFORE,** judgment is hereby rendered GRANTING the instant petition. The Compromise Agreement dated November 20, 1998 signed by the parties and counsel in Civil Case No. CEB-22825, which is Annex "G" to the Petition and the Decision dated November 27, 1998 of the Court a quo in Civil Case No. CEB-22825, entitled *"Virginia Y. Gochan, et al., vs. Bonifacio Paray, Jr., et al."* are hereby ANNULLED and SET ASIDE and the Compulsory Counterclaim is hereby DISMISSED for lack of merit.
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> Consequently, the registration of the said decision on December 29, 1998 with the Register of Deeds of Cebu City per Entry No. 188688 is likewise declared null and void.
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> The Register of Deeds of the City of Cebu is hereby ordered to forthwith cancel the registration of the Decision done on December 29, 1998, per Entry No. 188688.
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> No costs.
>
> **SO ORDERED**.[15]

The CA, subsequently, denied petitioners' motion for reconsideration; hence, this petition raising the grounds as follows:

> I. THE COURT OF APPEALS ERRED IN FINDING THAT EXTRINSIC FRAUD WAS PRESENT WHEN THE RESPONDENT WAS NOT IMPLEADED IN THE

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14 Petitioners, however, timely redeemed Lot Nos. 1028-LL and 1028-NN.

15 *Rollo*, p. 18. (Emphasis in the original)

REDEMPTION CASE AND WHEN PETITIONERS ENTERED INTO A COMPROMISE AGREEMENT WITH BONIFACIO PARAY.

II. THE COURT OF APPEALS ERRED IN ASSUMING THAT THE ROAD LOTS ARE WITHIN A RESIDENTIAL SUBDIVISION.

III. THE COURT OF APPEALS ERRED IN APPLYING THE RULING IN *WHITE PLAINS ASSOCIATION, INC. VS. LEGASPI, G.R. NO. 95522, FEBRUARY 7, 1991*, WHICH [HAD] LONG BEEN MODIFIED BY THE MORE RECENT CASE OF *WHITE PLAINS HOMEOWNERS ASSOCIATION, INC. VS. CA, 297 SCRA 547, OCTOBER 8, 1998*.

IV. THE COURT OF APPEALS ERRED IN APPLYING PD 957 AND PD 1216 WHICH ARE INAPPLICABLE IN DECIDING THE CASE AND WHICH LAWS DO NOT HAVE RETROACTIVE EFFECT.

V. THE OTHER GROUNDS RELIED UPON BY RESPONDENT ARE EQUALLY UNAVAILING.[16]

The petition is impressed with merit.

The general rule is that, except to correct clerical errors or to make *nunc pro tunc* entries, a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it.[17] A final and executory decision can, however, be invalidated via a petition to annul the same or a petition for relief under Rules 47 and 38, respectively, of the 1997 Rules of Civil Procedure *(Rules)*.[18]

Specifically, Sections 1 and 2 of Rule 47 provide for the coverage and grounds for annulment of judgments or final orders and resolutions of the RTCs in civil actions:

> **SECTION 1.** ***Coverage.*** – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.
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> **SEC. 2.** ***Grounds for annulment.*** – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
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> Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

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16 *Id.* at 43.

17 *Salting v. Velez*, G.R. No. 181930, January 10, 2011, 639 SCRA 124, 131.

18 *Id.*

Although Section 2 of Rule 47 provides that a petition for annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence has recognized denial of due process as an additional ground.[19] In this case, extrinsic fraud was the basis of the CA in annulling the trial court's judgment; thus, there is a need to examine the concept, as established by a plethora of jurisprudence and, thereafter, to determine whether the CA, in the exercise of its original jurisdiction, correctly applied the same.

We begin by restating that an action to annul a final judgment on the ground of fraud will lie only if the fraud is extrinsic or collateral in character.[20] In *Ancheta v. Guersey-Dalaygon*,[21] the Court elaborated:

> Fraud takes on different shapes and faces. In *Cosmic Lumber Corporation v. Court of Appeals*, the Court stated that "man in his ingenuity and fertile imagination will always contrive new schemes to fool the unwary."
>
> There is extrinsic fraud within the meaning of Sec. 9 par. (2), of B.P. Blg. 129, where it is one the effect of which prevents a party from hearing a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters, not pertaining to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy. In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case by fraud or deception practiced on him by his opponent. Fraud is extrinsic where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had any knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.[22]

Similarly, *City Government of Tagaytay v. Guerrero*[23] distinguished:

> x x x [F]raud may also be either extrinsic or intrinsic. There is intrinsic fraud where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been

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19 See *Diona v. Balangue*, G.R. No. 173559, January 7, 2013, 688 SCRA 22, 35; *Benatiro v. Heirs of Evaristo Cuyos*, G.R. No. 161220, July 30, 2008, 560 SCRA 478, 495; *Biaco v. Phil. Countryside Rural Bank*, 544 Phil. 45, 53 (2007); and *Intestate Estate of the late Nimfa Sian v. Philippine National Bank*, 542 Phil. 648, 654 (2007).

20 *Benatiro v. Heirs of Evaristo Cuyos*, *supra* note 19, at 495.

21 523 Phil. 516 (2006).

22 *Ancheta v. Guersey-Dalaygaon*, *supra*, at 530-531.

23 G.R. Nos. 140743 & 140745, and G.R. Nos. 141451-52, September 17, 2009, 600 SCRA 33.

> litigated therein. Fraud is regarded as extrinsic where the act prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy. Extrinsic fraud is also actual fraud, but collateral to the transaction sued upon.
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> x x x x
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> Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. The fraud or deceit cannot be of the losing party's own doing, nor must such party contribute to it. The extrinsic fraud must be employed against it by the adverse party, who, because of some trick, artifice, or device, naturally prevails in the suit. It affects not the judgment itself but the manner in which the said judgment is obtained.[24]

Intrinsic fraud refers to acts of a party at a trial which prevented a fair and just determination of the case, and which could have been litigated and determined at the trial or adjudication of the case.[25] In contrast, extrinsic or collateral fraud is a trickery practiced by the prevailing party upon the unsuccessful party, which prevents the latter from fully proving his case; it affects not the judgment itself but the manner in which said judgment is obtained.[26] Fraud is regarded as extrinsic "where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court."[27]

In this case, the CA concluded that petitioners committed extrinsic fraud, since they "employed schemes which effectively excluded [respondent] and other co-owners from participating in the trial."[28] It opined that while the subject lots may have been registered in the name of petitioners, they could not be the subject of any contract or compromise because they are road lots which are for public use and, therefore, beyond the commerce of men. Cited as basis were *White Plains Association, Inc. v. Legaspi*,[29] the preambulatory clauses of Presidential Decree (P.D.) No. 1216, and Sections 17 and 22 of P.D. No. 957. The CA observed:

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24 *City Government of Tagaytay v. Guerrero, supra*, at 60-61. (Citations omitted)

25 *Hermano v. Alvarez, Jr.*, G.R. No. 188778, June 27, 2012 (2nd Division Resolution) and *Judge Carillo v. Court of Appeals*, 534 Phil. 154, 167 (2006).

26 *People v. Bitanga*, 552 Phil. 686, 693 (2007).

27 *Castigador v. Nicolas*, G.R. No. 184023, March 4, 2013 (1st Division Resolution); *Bulawan v. Aquende*, G.R. No. 182819, June 22, 2011, 652 SCRA 585, 594; *Benatiro v. Heirs of Evaristo Cuyos*, *supra* note 19, at 495-496; and *Judge Carillo v. Court of Appeals*, *supra* note 25, at 166-167.

28 June 28, 2007 CA Decision pp. 5-6; *rollo*, pp 11-12.

29 271 Phil. 806 (1991).

> x x x [T]he Court finds that the filing of Civil Case No. CEB-22825, and the subsequent compromise agreement which immediately terminated the same were only ploys to give legality to the occupation by [petitioners] of the subject road lots which are clearly beyond the commerce of man. They filed a case in court in order to give legal color to their occupation. Then they conveniently entered into a compromise agreement in order to shorten the proceedings and foreclose any intervention or opposition from petitioner and from other lot owners in the subdivision who were purposely excluded therefrom and to their damage and prejudice.
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> Furthermore, [petitioners] already erected structures on the road lots which can be considered as alteration that requires the permission of the National Housing Authority and the conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the affected lot buyers in the subdivision under Presidential Decree 957. These requirements were not complied with by [petitioners] in the instant case.
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> If only [respondent] and other subdivision lot owners were notified of the filing of the case involving the subject lots, they could have intervened and protected their rights against the unscrupulous acts of [petitioners] and the issues raised by [respondent] in the instant petition could have been properly resolved by the court *a quo*.[30]

In denying petitioners' motion for reconsideration, the CA additionally held:

> To reiterate, this Court finds that extrinsic fraud exists in the instant case based on the following facts: (a) that the ownership of the subject road lots were conveniently vested to the Gochans when Civil Case No. CEB-22825 was commenced and terminated without notifying [respondent] and other subdivision lot owners about the case; and (b) that the November 20, 1998 Compromise Agreement was consciously and deliberately entered into by [petitioners] to foreclose [respondent] and other subdivision lot owners from intervening and participating in the trial of the case.
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> It must be emphasized that the instant case does not involve the entire property of [petitioners] but only the road lots therein leading to the subdivision where [respondent] resides. It must be emphasized further that said road lots were the subjects of the warranty given by [respondent's] predecessor-in-interest, Amparo Alo, which reads:
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> > **"I further bind myself, by these presents, not to alienate, encumber or otherwise dispose of my rights and interest in all the road lots or the subdivision roads, of subdivision plan Psd-21702 and to allow said vendees, their heirs, successors and assigns the perpetual use thereof as part of the consideration of this sale."**

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30 *Rollo*, p. 99.

> Verily, [petitioners] cannot claim that there is no extrinsic fraud in the instant case because "the case was only between [petitioners] and Bonifacio Paray and it was not at all necessary to inform, notify or implead [respondent] in CEB-22825." This claim would have been totally correct if Civil Case No. CEB-22825 did not include the subject road lot. Hence, [petitioners] clearly violated [respondent's] right when they filed Civil Case No. CEB-22825 and subsequently entered into a Compromise Agreement which fraudulently and effectively vested upon them absolute ownership of the road lots, totally and flagrantly disregarding the abovementioned warranty.
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> It is also in this regard that this Court ruled that [respondent] has the legal personality to file the instant petition, being a real party-in-interest as defined under Section 7, Rule 3, of the Revised Rules of Court x x x[31]

Based on the foregoing, are petitioners guilty of committing extrinsic fraud? We think not.

To be clear, the governing law with respect to redemption by co-owners in case the share of a co-owner is sold to a third person is Article 1620 of the New Civil Code, which provides:

> Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.
>
> Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.

Article 1620 contemplates of a situation where a co-owner has alienated his *pro-indiviso* shares to a third party or stranger to the co-ownership.[32] Its purpose is to provide a method for terminating the co-ownership and consolidating the dominion in one sole owner.[33] In *Basa v. Aguilar*,[34] the Court stated:

> Legal redemption is in the nature of a privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been thrust. (10 Manresa, 4th Ed., 317.) It is intended to minimize co-ownership. The law grants a co-owner the exercise of the said right of

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31 *Id*. at 107-108. (Emphasis in the original)
32 *Reyes v. Concepcion*, 268 Phil. 174, 183 (1990).
33 *Aguilar v. Aguilar*, 514 Phil. 376, 381 (2005).
34 202 Phil. 452 (1982). See also *Fernandez v. Spouses Tarun*, 440 Phil. 334, 344 (2002).

> redemption when the shares of the other owners are sold to "a third person." A third person, within the meaning of this Article, is anyone who is not a co-owner. (Sentencia of February 7, 1944 as cited in Tolentino, Comments on the Civil Code, Vol. V, p. 160.)[35]

We already held that only **the redeeming co-owner and the buyer** are the indispensable parties in an action for legal redemption, to the exclusion of the seller/co-owner.[36] Thus, the mere fact that respondent was not impleaded as a party in Civil Case No. CEB-22825 is not in itself indicative of extrinsic fraud. If a seller/co-owner is not treated as an indispensable party, how much more is a third person who merely alleged that his lots are affected thereby? Truly, the exclusion of respondent (or other alleged subdivision lot owners who are equally affected) from the legal redemption case does not entitle him to the right to ask for the annulment of the judgment under Rule 47 of the Rules, because he does not even have any legal standing to participate or intervene therein.

Assuming *arguendo* that respondent has the personality to be impleaded in Civil Case No. CEB-22825 since it is settled that a person need not be a party to the judgment sought to be annulled,[37] still, he failed to prove with sufficient particularity the allegation that petitioners practiced deceit or employed subterfuge that precluded him to fully and completely present his case to the trial court. Like in other civil cases, the allegation of extrinsic fraud must be fully substantiated by a preponderance of evidence in order to serve as basis for annulling a judgment.[38] Extrinsic fraud has to be definitively established by the claimant as mere allegation does not instantly warrant the annulment of a final judgment.[39] *Ei incumbit probotio qui dicit, non qui negat.* He who asserts, not he who denies, must prove.[40] Unfortunately, respondent failed to discharge the burden.

We reverse the CA findings as it is grounded entirely on speculation, surmises or conjectures.[41] Upon examination of the records, the evidence

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35 *Base v. Aguilar, supra*, at 455.

36 *Fidel Lagman, et al. v. Lydia Data, et al.*, G.R. No. 168171, March 21, 2007 (3rd Division Resolution), citing *Robles v. Court of Appeals*, 172 Phil. 540, 543 (1978).

37 *Judge Carillo v. Court of Appeals*, *supra* note 25, at 166.

38 See *Metropolitan Bank & Trust Company v. Hon. Alejo*, 417 Phil. 303, 314 (2001).

39 *Espinosa v. Court of Appeals*, G.R. No. 128686, May 28, 2004, 430 SCRA 96, 103.

40 *Alba v. Court of Appeals*, 503 Phil. 451, 464 (2005).

41 While the findings of facts of the CA are, as a rule, conclusive, it is still subject to certain exceptions, to wit: (1) the factual findings of the CA and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the CA from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the CA, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the CA is premised on a misapprehension of facts; (7) the CA fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the CA are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the CA are premised on the absence of evidence but are contradicted by the evidence on record. (See *Alcazar v. Arante*, G.R. No. 177042, December 10, 2012, 687 SCRA 507, 516-517)

presented by respondent are plainly wanting to show any specific trick, artifice, or device employed by petitioners that caused them to prevail over the Spouses Paray. In fact, when petitioners contended that extrinsic fraud must be present in an action to annul judgment, respondent erroneously countered that it is "immaterial" and even admitted that "[t]he present case is based on the illegality of the acts of the [petitioners] arising from the nature of the lots dealt with and the resultant violation by the [petitioners] of the law declaring the act to be so."[42]

Of equal importance, aside from respondent's failure to prove the presence of extrinsic fraud, a petition to annul the RTC judgment under Rule 47 of the Rules is not the correct legal remedy, because there are other options clearly available to him to protect his alleged right over the road lots. Certainly, the issues raised by respondent – on whether the subject lots are road lots by nature; whether the subject lots are subdivision lots within a subdivision project; whether a right of way had been granted him by his predecessors-in-interest; whether the laws and jurisprudence he cited are applicable to the case; and many other incidental matters – are not proper subjects of, as these would effectively muddle the proper issues for determination in, a suit for legal redemption. A full-blown trial – either via a proceeding directly attacking the certificates of title of petitioners, or in an easement case, or even before Civil Case No. CEB-22996 pending before Cebu RTC Br. 10 – is proper where these factual and legal issues could be completely threshed out.

The Court has repeatedly stressed that an action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately.[43] It is a recourse equitable in character, allowed only in exceptional cases as where there is no adequate or appropriate remedy available (such as new trial, appeal, petition for relief) through no fault of petitioner.[44] It is an equitable principle as it enables one to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.[45] Yet, more importantly, the relief it affords is equitable in character because it strikes at the core of a final and executory judgment, order or resolution,[46] allowing a party-litigant another opportunity to reopen a judgment that has long elapsed into finality. The reason for the restriction

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42 *Rollo*, p. 259.

43 *Republic v. Technological Advocates for Agro-Forest Programs Association, Inc. (TAFPA, INC.)*, G.R. No. 165333, February 9, 2010, 612 SCRA 76, 85 and *Nudo v. Caguioa*, G.R. No. 176906, August 4, 2009, 595 SCRA 208, 212.

44 See *Antonino v. Register of Deeds of Makati City*, G.R. No. 185663, June 20, 2012, 674 SCRA 227, 236; *Moral, Jr. v. Chua*, G.R. No. 191199, April 16, 2012 (2nd Division Resolution); *Philippine Tourism Authority v. Philippine Golf Development & Equipment, Inc.*, G.R. No. 176628, March 19, 2012, 668 SCRA 406, 412; *Biaco v. Phil. Countryside Rural Bank*, 544 Phil. 45, 53 (2007); and *Judge Carillo v. Court of Appeals*, *supra* note 25, at 169.

45 See *Antonino v. Register of Deeds of Makati City*, *supra* note 44, at 237, citing *Barco v. Court of Appeals*, 465 Phil. 39, 64 (2004).

46 See *Mandy Commodities Co., Inc. v. The International Commercial Bank of China*, G.R. No. 166734, July 3, 2009, 591 SCRA 579, 588.

is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.[47]

> x x x The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[48]

WHEREFORE, premises considered, the instant Petition is **GRANTED**. The June 28, 2007 Decision and March 10, 2008 Resolution, of the Court of Appeals in CA-G.R. SP No. 71312, which annulled and set aside the judgment based on compromise dated November 27, 1998 of the Regional Trial Court, Branch 17, Cebu City, are **REVERSED AND SET ASIDE**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

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47 *Moral, Jr. v. Chua*, *supra* note 44; *Nudo v. Caguioa*, *supra* note 43; and *Mandy Commodities Co., Inc. v. The International Commercial Bank of China*, *supra* note 46, at 588.

48 *Antonino v. Register of Deeds of Makati City*, *supra* note 44, at 236, citing *Ramos v. Judge Combong, Jr.*, 510 Phil. 277, 281-282 (2005); and *Barco v. Court of Appeals, supra* note 45, at 54.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

MARIA LOURDES P. A. SERENO
Chief Justice