

FIRST DIVISION

[G.R. No. 238714. August 30, 2023]

ANNALIZA C. SINGSON,* PETITIONER, VS. SPOUSES NAR CHRISTIAN CARPIO AND CECILIA CAO CARPIO, RESPONDENTS.

DECISION

GESMUNDO, C.J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, seeking to modify the October 26, 2017 Decision^[2] and the April 12, 2018 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 104327 which affirmed the November 4, 2014 Decision^[4] of the Regional Trial Court of Manila, Branch 47 (RTC) in Civil Case No. 10-124055, granting the Complaint^[5] for Recovery of Possession and Ownership of Real Property with Damages filed by spouses Nar Christian Carpio (*Nar*) and Cecilia Cao Carpio (collectively, *respondents*) against Enriquito C. Caamic (*Enriquito*) and Annaliza C. Singson (*petitioner*).

The Antecedents

Respondents claim ownership over a 51.24-square meter land, including the two-storey residential house erected thereon situated at No. 22-E Block 5, De los Santos Street, Magsaysay Village, Tondo, Manila (*subject property*), and covered by Transfer Certificate of Title (TCT) No. 286305.^[6] They acquired the said property from Primitiva Cayanan Vda. De Caamic (*Primitiva*) on February 16, 2007, and averred that since then, they had been religiously paying the realty taxes, as shown by official receipts for the years 2007, 2008, 2009, and 2010.^[7]

It appears that prior to and after the sale, petitioner and Primitiva had been occupying the subject property. However, after Primitiva died on July 21, 2007,^[8] Enriquito, claiming to be her son and heir, suddenly surfaced and asserted his interest over the subject property. When petitioner and Enriquito refused to vacate the subject property despite repeated demands, respondents filed a complaint before their *barangay* for possible conciliation.

Unfortunately, no amicable settlement was reached based on the certification to file action issued by the *Lupong Tagapamayapa*.^[9]

Thus, on August 6, 2010, respondents filed a Complaint for Recovery of Possession and Ownership of Real Property with Damages and prayed that they be declared as lawful owners of the subject property and that Enriqueito and petitioner be ordered to vacate the same. Respondents also urged the RTC to order Enriqueito and petitioner to pay the following amounts: (1) monthly rental in the amount of P1,500.00 from July 2007 up to the time they actually vacate the premises; (2) P50,000.00 as moral damages; (3) P50,000.00 as exemplary damages; (4) P30,000.00 as attorney's fees, plus P3,000.00 appearance fee per hearing; and (5) costs of suit.^[10]

In her Answer,^[11] petitioner claimed to be the grandniece of Primitiva and her husband, who took care of Primitiva during her lifetime. She also helped Primitiva secure a loan from respondents who were their neighbors, in the amount of P135,000.00 which Primitiva used to redeem the subject property from a certain Lordita Piamonte (*Piamonte*). While respondents agreed to loan the said amount, they made Primitiva and petitioner sign a notarized document entitled "*Bilihan ng Lupa*"^[12] for assurance.^[13]

Several months after Primitiva died, petitioner received through mail a document entitled "*Kasunduan*"^[14] dated February 16, 2007 which indicated that Primitiva had sold the property to respondents for the amount of P450,000.00. Since it was the first time that petitioner saw the document, she informed her uncle, Enriqueito, about it.^[15]

When Enriqueito arrived from the province, petitioner accompanied him to Atty. Richard Anolin (*Atty. Anolin*) who supposedly notarized the document. However, Atty. Anolin issued a Certification^[16] indicating that he did not notarize a document entitled "*Deed of Sale*"^[17] dated February 18, 2007 which appeared to have been executed by Primitiva and petitioner. This prompted petitioner and Enriqueito to file a case for falsification against respondents before the City Prosecutor of Manila. While the case was in its preliminary investigation, respondents attempted to register the subject property under their names, but petitioner opposed the move. However, for unknown reasons, respondents had been successful in registering the subject property under their names on their third attempt.^[18]

As part of her affirmative defense, petitioner asserted that Primitiva had no intention of relinquishing the subject property. She insisted that with the existence of the document *Bilihan ng Lupa*, respondents have no cause of action and that the transfer of the

registration of the contested subject property to their names was done fraudulently.^[19]

In their Reply,^[20] respondents alleged that petitioner herself was a witness to the signing of the *Bilihan ng Lupa*. They were able to transfer the title to their names by going through the proper channels and government authorities, hence, there is no basis for petitioner's claim of fraud. On the other hand, petitioner had not shown her entitlement to the property either as an heir, donee, vendee, or owner by prescription. Moreover, petitioner, in effect, was collaterally attacking the validity of their title, which she cannot do since Torrens titles are indefeasible and binding upon the whole world unless nullified by a court of competent jurisdiction.^[21]

During trial, respondents presented only one witness, Nar, and submitted the following documentary evidence, namely: a certified true copy of TCT No. 286305 of the Register of Deeds of Manila; the declarations of real property value (land and building) in respondents' names; the real estate tax receipt and real estate tax statement of account for the year 2013; the notice to vacate addressed to Enriquito and petitioner; the certification by the post office that the registered mail was duly received; and the certificate to file action issued by the *Lupong Tagapamayapa*.^[22]

On the other hand, petitioner testified to support her claims and presented the following documents: a copy of the *Bilihan ng Lupa*; the death certificate of Primitiva; the certification of Atty. Anolin to the effect that the Deed of Sale allegedly executed by Primitiva and petitioner was a forgery; and her judicial affidavit.^[23]

Meanwhile, on July 22, 2011, respondents filed a Manifestation and Motion to Drop Enriquito C. Caamic as Defendant,^[24] averring that he had already vacated the subject property. On November 8, 2011, the RTC granted the motion and dropped Enriquito as party-defendant.^[25]

Ruling of the RTC

In its November 4, 2014 Decision, the RTC decreed:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendant:

1. To vacate and voluntarily surrender possession of the subject house and lot

located at No. 22-E Block 5, [D]e los Santos Street, Magsaysay Village, Tonda, Manila and covered by TCT No. 286305 upon [respondents];

2. To pay [respondents] the monthly rental of [P]1,500.00 due [to] her occupation of the premises and starting July 2007 until she has actually vacated the premises; and

3. To pay [respondents'] Attorney's [f]ees m the amount of [P]30,000.00.

SO ORDERED.^[26]

The RTC ruled that based on the evidence presented by both parties, particularly the document *Bilihan ng Lupa*, the transaction between them was a contract of sale with conventional redemption. It noted that the bone of contention between them is the provisions of such document on the vendor's right to redeem or buyback the property within five years from the date of the instrument.^[27]

Taking into account the terms and conditions of the document *Bilihan ng Lupa* and Articles 1601^[28] and 1616^[29] of the Civil Code, the RTC held that there was a valid transfer of ownership from the previous owner/vendor, Primitiva, to respondents. As such, respondents were not prohibited from registering the title in their names, but without prejudice to the right of Primitiva to redeem it within the agreed period. The RTC held that when Primitiva died in July of 2007, her right to redeem had also ended. Thus, when petitioner and Enriquito tried to redeem the subject property, they were already barred from doing so.^[30]

Aggrieved, petitioner filed an Appeal,^[31] assigning the lone error that the RTC gravely erred in holding that the *Bilihan ng Lupa* was a perfected contract of sale with conventional redemption.^[32] She insisted that since the contract between Primitiva and respondents was an equitable mortgage, respondents' remedy was either to recover the loaned amount by filing an action for sum of money or foreclosing the property.^[33]

Ruling of the CA

On October 26, 2017, the CA rendered a Decision affirming the RTC. It ruled that the *Bilihan ng Lupa*, is an equitable mortgage because: (1) Primitiva and petitioner remained in possession of the subject property despite the purchase; and (2) Primitiva was in dire need of money to redeem the subject property at the time of the transaction.^[34]

The CA, however, held that regardless of the finding that the transaction was an equitable mortgage, petitioner cannot insist on the same because nobody had the right to redeem the contested realty. When Primitiva died, she had no known heirs to whom her rights and obligations could have been passed on. Even if petitioner may have been treated by Primitiva as her own daughter, she was only a distant relative and not a legal heir. Thus, the right of redemption did not pass unto her. Having failed to establish her legal personality to redeem the property, she is likewise found to have no personality to insist on the equitable mortgage.^[35]

Furthermore, Enriquito, as the supposed heir of Primitiva, failed to present any convincing evidence to corroborate his claim other than his belated registration of birth certificate. He likewise failed to prove his right as an heir when he voluntarily did not participate during the proceedings of the case.^[36]

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the assailed 4 November 2014 Decision of the RTC is **AFFIRMED**.

SO ORDERED.^[37]

Dissatisfied with the CA Decision, petitioner filed a Motion for Partial Reconsideration.^[38] In its Resolution dated April 12, 2018, the CA denied the motion. Hence, this Petition for Review on *Certiorari*.

Issue

Petitioner raises the sole issue of whether the CA gravely erred in affirming the RTC despite proof that the *Bilihan ng Lupa* is in the nature of a *pactum commissorium*.^[39] Petitioner contends that the CA accorded respondents with the power to automatically appropriate the mortgaged property in the event of nonpayment. She insists that the ruling in *Spouses Solitarios v. Spouses Jaque*^[40] squarely applies in the case at bench where the Court, despite finding that the deed of sale was an equitable mortgage, ruled that the transfer of ownership to the mortgagee was void for being in the nature of a *pactum commissorium*.^[41]

According to petitioner, respondents cannot automatically appropriate the mortgaged

property in the event of nonpayment, since the proper procedure is that of foreclosing the mortgage and, thereafter, buying the same in the auction sale. Instead of foreclosing the contested property, respondents appropriated it for themselves after the death of Primitiva. Being a *pactum commissorium*, the contract and the subsequent registration of the property in the names of respondents, must be declared void. She submits that TCT No. 286305 under respondents' names must be declared null and void, and the Register of Deeds of Manila must issue a new title in the name of Primitiva or her estate.^[42]

Finally, petitioner asserts that respondents' claims for rentals have no basis in law and jurisprudence. They are likewise not entitled to attorney's fees because although they were compelled to litigate, she did not violate any of their rights which could have produced a cause of action. Conversely, they are liable to pay her attorney's fees for trying to eject her without right to do so, and moral damages because she suffered anxiety, sleepless nights, headaches, and hypertension.^[43]

In their Comment,^[44] respondents maintain that petitioner has not established any right to remain in the subject property. The Torrens title issued to them which covered the said subject property, is indefeasible and binding upon the whole world unless and until nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title. Moreover, the issue on the validity of title, *i.e.*, whether it was fraudulently issued, can only be raised in an action expressly instituted for that purpose. On the other hand, the question on whether the *Bilihan ng Lupa* is an equitable mortgage or a contract of sale with equitable redemption, is irrelevant, as the same cannot prevail over the Torrens title, which is conclusive evidence with respect to their ownership of the land described therein.^[45]

In her Reply,^[46] petitioner argues that the principle of indefeasibility of the Torrens title shall not apply if it is used to perpetrate fraud against a rightful owner. Since respondents acquired the contested property by way of a transaction which is *pactum commissorium*, the Torrens system cannot be used to countenance a prohibited practice. As such, the Court can invalidate the title issued to respondents since its transmission was made contrary to law and public policy.^[47]

Ruling of the Court

The petition is meritorious.

Respondents failed to prove by preponderant evidence that they are entitled to be declared owners of the property and to have possession of the same.

It is well-settled that the party who alleges the affirmative of the issue has the burden of proof, and that with the plaintiff in a civil case, the burden of proof never parts. Once the plaintiff makes out a *prima facie* case in his or her favor in the course of the trial, however, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of the plaintiff.^[48]

In civil cases, the party having the burden of proof must establish his/her case by preponderance of evidence.^[49] "Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other or that which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Bare allegations, unsubstantiated by evidence, are not equivalent to proof."^[50]

To support their prayer to be declared lawful owners and to recover possession of the subject property, respondents formally offered in evidence TCT No. 286305 issued under their names, the Declarations of Real Property Value (land and building),^[51] the Real Estate Tax receipts, and the Statement of Account for the year 2013.^[52] While these pieces of documentary evidence make out a *prima facie* case in their favor, petitioner successfully controverted respondents' claim of ownership and discharged the burden of evidence when she proffered the *Bilihan ng Lupa* and the certification of Atty. Anolin to the effect that the Deed of Sale allegedly executed by Primitiva and petitioner on February 18, 2007 was a forgery.

To stress, the CA ruled correctly that the *Bilihan ng Lupa* is an equitable mortgage, and not a contract of sale with conventional redemption as held by the RTC. As duly noted by the CA, the *Bilihan ng Lupa* can be presumed as an equitable mortgage in view of the existence of two circumstances under Art. 1602^[53] of the New Civil Code, namely: (1) Primitiva and petitioner were allowed to remain in possession of the property for five years despite the purchase thereof by respondents; and (2) Primitiva was shown to be in dire need of money at the time of the transaction in order to redeem the same property from Piamonte.

At any rate, whenever it is clearly shown that a deed of sale with *pacto de retro*, regular on

its face is given as a security for a loan, it must be regarded as an equitable mortgage inasmuch as a sale with right to repurchase is not favored.^[54] In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage,^[55] because this involves a smaller transmission of rights and interests.^[56]

Significantly, respondents did not present any evidence to prove their allegation that they purchased the property from Primitiva on February 16, 2007, or that they had foreclosed the mortgage and acquired the property in a public auction. They even failed to dispute the authenticity and due execution of the *Bilihan ng Lupa* which the CA found to be an equitable mortgage and not a contract of sale with conventional redemption. Notably, in the Reply they filed before the RTC, they even averred that they bought the property from Primitiva and noted that petitioner herself was witness to the transaction by signing the *Bilihan ng Lupa*. Having failed to specifically deny under oath the existence of the *Bilihan ng Lupa* which is the basis of petitioner's affirmative defense, they are deemed to have admitted its authenticity and due execution.

Apart from the *Bilihan ng Lupa* dated February 18, 2007 which indicated a consideration of P135,000.00 plus the right to repurchase within five years from its effectivity, there are two other contracts submitted by petitioner as evidence purportedly executed by Primitiva which conveyed ownership over the same subject property to respondents for various considerations: (1) *Kasunduan* dated February 16, 2007 for P450,000.00; and (2) Deed of Sale^[57] dated February 18, 2007 for P70,000.00 which was denounced as a forgery by the same notary public who notarized the *Bilihan ng Lupa*. Respondents neither denied their existence nor explained, at the very least, how they were able to validly acquire the property from Primitiva and transfer its registration under their names.

Instead, respondents stake their claim of absolute and indefeasible title by presenting TCT No. 286305, tax declarations, and receipts of realty tax payments. They posit that due to the indefeasibility of a Torrens title, the same should prevail and render immaterial the claim that the *Bilihan ng Lupa* is an equitable mortgage.^[58]

Respondents' claim fails to persuade.

Tax declarations and tax receipts may only become the basis of a claim for ownership when they are coupled with proof of actual possession of the property.^[59] Unfortunately, respondents cannot rely on this rule in light of their admission that they were not in possession of the property after having bought the same from Primitiva. Moreover, the

Bilihan ng Lupa expressly allowed Primitiva and petitioner to continue living in the property for five years starting on February 18, 2007.

On the other hand, while a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein, it is not a conclusive proof of ownership, but merely confirms or records title already existing and vested.^[60] In *Spouses Yu Hwa Ping and Gaw v. Ayala Land, Inc.*,^[61] the Court explained the principle as follows:

It is a well-settled rule that ownership is different from a certificate of title. The fact that a person was able to secure a title in his name does not operate to vest ownership upon him of the subject land. Registration of a piece of land under the Torrens System does not create or vest title, because it is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.^[62]

Considering that respondents' pieces of evidence, consisting of a certificate of title, tax declarations, and tax receipts, are insufficient to prove how they acquired the subject property from Primitiva, their claim of ownership and prayer for its recovery must be rejected. Conversely, since the *Bilihan ng Lupa* proffered by petitioner is the only evidence that was formally offered and admitted by the RTC to establish how they acquired the subject property, respondents should have further proven that they transferred ownership thereof under their names by foreclosing on the equitable mortgage and thereafter, purchasing the property in a public auction. Inasmuch as mere allegation is not evidence and is not equivalent to proof,^[63] their bare and unsubstantiated allegation that they secured a transfer certificate of title over the property by going through the proper channels and government authorities deserves no credence.

In a reivindicatory suit, the issue of direct or collateral attack on plaintiff's title is irrelevant, as the court can rule definitively on the issue of ownership and pass upon the validity of the certificate of title.

To be sure, respondents cannot claim that the defense raised by petitioner is a collateral attack on their title.

In *Heirs of Cullado v. Gutierrez*^[64] (*Cullado*), the Court ruled that if the plaintiff's claim of ownership is based on a Torrens title and the defendant disputes the validity of such title, then the issue of whether there is a direct or collateral attack on the plaintiff's title is irrelevant. This is because the court where the reivindicatory or reconveyance suit is filed has the requisite jurisdiction to rule definitively or with finality on the issue of ownership—it can pass upon the validity of the plaintiff's certificate of title.^[65]

Here, respondents' Complaint is for recovery of possession and declaration of ownership of the property on the basis of TCT No. 286305 registered in their names. In her Answer, petitioner sought for the dismissal of the Complaint anchored on the affirmative defense that based on the *Bilihan ng Lupa*, Primitiva “never had the intention of relinquishing her property,”^[66] and that respondents' “action of transferring the registration to their name[s] should be declared null and void considering that the issuance of title in the name[s] of [respondents] was done fraudulently.”^[67] In consonance with the ruling in *Cullado*, respondents cannot raise that petitioner's counterclaim is a collateral attack on their title, as the trial court has jurisdiction to rule definitively on the issue of ownership and validity of the certificate of title of the property.

Registration of the property under respondents' names facilitated in a prohibited pactum commissorium manner was void; Respondents' title should be cancelled and Primitiva's title, as owner-mortgagor should be reinstated.

On the issue of the validity of respondents' acquisition of ownership of the subject property, Art. 2088^[68] of the New Civil Code provides that a creditor cannot appropriate or consolidate ownership over a mortgaged property merely upon failure of the mortgagor to pay a debt obligation. The essence of *pactum commissorium* is that ownership of the security will pass to the creditor by the mere default of the debtor.^[69] Incidentally, the only right of a mortgagee in case of nonpayment of debt secured by mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness.^[70] The mortgagor's default does not operate to automatically vest on the mortgagee the ownership of the encumbered property, for any such effect is against public policy.^[71]

In view of the undisputed existence of the *Bilihan ng Lupa*, and in the absence of proof that the said mortgage was foreclosed and the property was acquired in a public auction, the Court rules that the registration of the property under respondents' names was void. Such transfer constituted a *pactum commissorium* which is prohibited by existing laws for being contrary to morals and public policy. Consequently, the CA erred in upholding the RTC ruling that respondents had established themselves as the duly registered owner of the subject property who have the consequent right to possession. Perforce, respondents' Complaint should be dismissed for lack of merit.

Meanwhile, the CA also erred in ruling that (1) it is ineffective to insist on the mortgage since no one has the right to redeem the subject property; and (2) Primitiva had no known heirs to whom the rights and obligations would have passed on after her death.^[72]

Nowhere in the records can it be gathered that petitioner is insisting on redeeming the subject property as an heir or assign of Primitiva. Instead, she asserts in her Answer that Primitiva never had the intention to relinquish the property, and that respondents' action of transferring the registration to their names should be declared null and void, because the issuance of the title in their names was done fraudulently. She did not pray to be declared owner of the subject property, but rather seeks for the dismissal of respondents' Complaint. Through a Judicial Affidavit,^[73] she testified that the property subject of the *Bilihan ng Lupa* was meant to secure the payment of an obligation, and not to be sold to respondents, thus:

17. QUESTION: Nasabi mo kanina na isa rin sa dahilan kung bakit ka narito ay upang ipakita ang iyong tunay na kasunduan, at ito ay ang "Bilihan ng Lupa", maaari mo bang sabihin sa hukumang ito ang dahilan bakit nabuo ang kasunduang ito?

ANSWER: Ako po ay nangailangan ng pera sapagkat ang titulo na nasa pangalan ng aking ina[-]inahan ay unang nakasanla kay Lordita Piamonte. Sa kagustuhan naming ito [ay] matubos, lumapit ako kay Cecilia Carpio at nakiusap ako na kung maaari ay sila muna ang tumubos sa lupa sa halagang ONE HUNDRED THIRTY[-]FIVE THOUSAND PESOS (P135,000.00).

18. QUESTION: Ano naman ang reaksiyon ni Cecilia Carpio?

ANSWER: Sumang[-]jayon po siya na kaniyang tutubusin ang titulo kay Lordita Piamonte at pagkatapos po ay gumawa siya ng Kasunduan na ang title ay “Bilihan ng Lupa”.

19. QUESTION: Ang sinasabi mo bang “Bilihan ng Lupa” ay ang kasunduang iniabot mo sa akin kanina lamang?

ANSWER: Opo.

20. QUESTION: Sino ang mga taong bumubuo sa kasunduang ito?

ANSWER: Si Primitiva Caamic po, ang mag-asawang Carpio at ako bilang testigo.

21. QUESTION: Bilang testigo sa Kasunduan na “Bilihan ng Lupa,” ano ang importanteng bahagi ng kasunduang ito, kung mayroon man?

ANSWER: Iyon pong sinasabi na pwede naming tubusin ang lupa sa loob ng limang taon simula sa pagkasanla noong February 18, 2007 hanggang February 18, 2012.^[74]

However, petitioner’s contention that the CA erred in sustaining the transfer of title of the subject property despite the explicit prohibition on stipulation of *pactum commissorium*, is misplaced.

To be sure, there is no stipulation in the *Bilihan ng Lupa* which amounts to *pactum commissorium* whereby ownership of the property will pass to the creditor by the mere default of the debtor. For ready reference, the contract reads:

BILIHAN NG LUPA

Sa kaalaman ng lahat, kami sina PRIMITIV A CAYANAN CAAMIC at ANNALIZA CAAMIC SINGSON, mag-ina, pawang mga nasa hustong gulang at nakatira sa 22

E. Delos Santos St., Block 5, Magsaysay Village, Tondo, Manila, ay nagpapatunay sa mga sumusunod:

1. Na ako si PRIMITIVA CAYANAN CAAMIC ay nagmamayari ng isang piraso ng lote tulad ng pinatutunayan ng SN No. 1877679 at Transfer Certificate of Title (TCT) No. 267017 ng Register of Deeds ng Maynila;
2. Na si ANNALIZA CAAMIC SINGSON ay tinuturing kong anak at ako ay kasalukuyang naninirahan sa nasabing lote;
3. Na dahil sa pangangailangan namin ng salapi, ipinagbili ko kay CECILIA CAO CARPIO, nasa hustong gulang, may-asawa at naninirahan sa 103 D. Del Pilar St., Block 5, Magsaysay Village, Tondo, Manila ang nasabing lote sa halagang Isang Daan at Tatlumpu't-Limang Libong Piso (Php 135,000.00) kuwarta ng Pilipinas, sa kasunduang kami ay patuloy na maninirahan sa loob ng limang (5) taon simula ngayong ika-18 ng Pebrero taong 2007. Gayon din ang karapatang bilhin muli ang nasabing pagaari mula kay CECILIA CAO CARPIO sa halagang Isang Daan at Tatlumpu't-Limang Libong Piso (Php 135,000.00) kuwarta ng Pilipinas na may interest na 3% kada buwan. Nagkakahalaga ito ng Tatlung Daan at Walumpu't-Pitong Libong Piso (Php 387,000.00) kuwarta ng Pilipinas sa loob ng Limang (5) taon;
4. Pagkatapos ng Limang (5) taong kontrata simula ngayong ika-18 ng Pebrero 2007, kami ay obligadong aalis sa nasabing lote at ang kasulatan na pwede naming bilhin muli ay mababalewala. Matatapos ang kasulatang ito sa petsang ika-18 ng Pebrero taong 2012.^[75] (Emphasis omitted)

Pertinent portions of the contract indicate the following tenns and conditions: (1) that Primitiva is the owner of the subject property covered by TCT No. 267107; (2) that Primitiva and petitioner, were currently occupying the subject property; (3) that since they need money, Primitiva is selling the subject property to respondent Cecilia Cao Carpio for P135,000.00; (4) that Primitiva and petitioner will continue to live in the subject property for five years starting on February 18, 2007; (5) that Primitiva reserves the right to repurchase the subject property within five years for P135,000.00 plus interest of 3% per month, or for a total amount of P387,000.00; (6) that after five years from the start of the contract on February 18, 2007, or until February 18, 2012, they are obliged to leave the subject property and that the provision on the repurchase thereof will become ineffective. Clearly, there is nothing in the terms and conditions of the *Bilihan ng Lupa* that provides for

the automatic appropriation of the subject property by respondents upon failure to redeem the same.

Nonetheless, when a document appears on its face to be a sale with *pacto de retro*, the owner of the property may prove that the contract is really a loan with mortgage, by raising as an issue the fact that the document does not express the true intent and agreement of the contracting parties.^[76] Upon proof of the truth of the allegations that the instrument was merely given as a security for the repayment of a loan, the courts will enforce the agreement or understanding, in accord with the true intent of the parties at the time the contract was executed, even if the conveyance was accompanied by registration in the name of the transferee and the issuance of a new certificate of title in the latter's name.^[77]

Applying the principle of *pactum commissorium* to equitable mortgages, the Court ruled in *Montevirgen v. Court of Appeals*^[78] that the consolidation of ownership in the person of the mortgagee in equity, merely upon failure of the mortgagor in equity to pay the obligation, would amount to a *pactum commissorium*. If a mortgagee in equity desires to obtain title to a mortgaged property, the mortgagee's proper remedy is to cause the foreclosure of the mortgage in equity and buy it in a foreclosure sale.^[79]

In *Cruz v. Court of Appeals*,^[80] the Court again reiterated that, in an equitable mortgage, perfect title over the mortgaged property may not be secured in a *pactum commissorium* fashion, but only by causing the foreclosure of the mortgage and buying the same in an auction sale.^[81]

In *Spouses Solitarios v. Spouses Jaque*,^[82] a case involving a complaint for ownership and recovery of possession where the subject property was transferred to the mortgagee in a prohibited *pactum commissorium* manner, the Court voided the transaction and the registration of the deeds of sale by virtue of which the mortgagee was able to obtain the impugned TCT.^[83]

In *Dacquel v. Spouses Sotelo*,^[84] the Court noted that the transaction between the parties was demonstrated to be one of equitable mortgage. It then ruled that therein petitioner did not become the owner of the subject property involved but a mere mortgagee thereof. Thus, therein petitioner was bound by the prohibition against *pactum commissorium*. Having found that said petitioner proceeded to cause the cancellation of therein respondents' title to the mortgaged property and its transfer to therein petitioner's name without availing of the remedy of foreclosure, the Court concluded that said petitioner dabbled in the

prohibited practice of *pactum commissorium* and that the transaction is consequently rendered void, and title to therein subject property should be reverted to therein respondents.

To reiterate, respondents failed to present preponderant evidence to prove that they foreclosed the equitable mortgage denominated as *Bilihan ng Lupa* and acquired the subject property in a public auction. For failure to present any evidence on how they acquired the subject property from Primitiva, the Court can reasonably conclude that respondents' acquisition thereof by virtue of the *Bilihan ng Lupa* amounts to *pactum commissorium*.

Since respondents' acquisition of the subject property by virtue of the *Bilihan ng Lupa* amounts to the prohibited practice of *pactum commissorium*, the CA erred in affirming the RTC when it sustained the transfer of title thereto under their names. Thus, the title issued under respondents' names should be nullified and reinstated in the name of Primitiva. After all, in an equitable mortgage, title to the property in issue which has been transferred to the mortgagee actually remains or is transferred back to the owner-mortgagor, conformably to the settled doctrine that the mortgagee does not become the owner of the mortgaged property because ownership thereof remains with the mortgagor pursuant to Art. 2088 of the New Civil Code.^[85]

*Respondents failed to
prove their right over the
property, possession of the
same cannot be awarded in
their favor*

The Court is aware of its ruling in *Muñoz v. Ramirez*,^[86] where it was established that the reciprocal obligations of the parties were under an equitable mortgage. In the said case, the Court ordered the reconveyance of the property to the mortgagor upon the payment of the loan within 90 days from finality of the decision.^[87] A similar ruling cannot be rendered in the instant case in view of Primitiva's death, and the fact that respondents had not been in possession of the subject property. It also bears noting that the records do not reveal any information on Primitiva's estate.

At any rate, in an *accion reivindicatoria*, like the complaint filed by respondents, the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.^[88] It is an action to recover possession of a parcel of land as an element of ownership. In such an action, the basic question is whether the plaintiff has presented sufficient evidence to prove

his/her ownership of the property in question. Like in all civil cases, the burden of proof is on the plaintiff to establish his/her case by preponderance of evidence, which, in the final analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. The plaintiff must rely on the strength of his/her own evidence and not upon the weakness of that of his/her opponent.^[89]

Here, respondents failed to present evidence that they had acquired ownership of the subject property through foreclosure of the equitable mortgage and purchase at a public auction. As such, they cannot validly demand upon petitioner to vacate and surrender possession of the subject property and to pay rentals thereon, given that the right to use or enjoy the property and its fruits is one of the attributes of ownership.

No basis to award moral damages and attorney's fees

Anent the award of moral damages and attorney's fees, such civil liability cannot be granted in petitioner's favor.

Moral damages are recoverable only if the party from whom it is claimed has acted fraudulently or in bad faith or in wanton disregard of his/her contractual obligations.^[90] Bad faith, on the other hand, does not simply connote bad judgment or negligence, but imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.^[91]

As to fraud, on the other hand, the rule is that he/she who alleges the same affecting a transaction must substantiate such allegation, since it is presumed that a person takes ordinary care of concerns and that private transactions have been fair and regular.^[92] Fraud is never presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate.^[93] Contentions must be proved by competent evidence and reliance must be had on the strength of the party's evidence and not upon the weakness of the opponent's defense.^[94] Mere allegation is definitely not evidence.^[95]

The Court is not convinced that respondents acted fraudulently or in bad faith in transferring the title of the subject property under their names. Petitioner failed to formally

offer in evidence the contracts purportedly conveying the subject property to respondents, namely: (1) the *Kasunduan* dated February 16, 2007; and (2) the Deed of Sale dated February 18, 2007 which was certified as a forgery by the same notary public who notarized the *Bilihan ng Lupa*. Petitioner only presented the *Bilihan ng Lupa* which the Court confirmed to be an equitable mortgage that must first be foreclosed before respondents can acquire ownership thereof in a public auction. What was only established in this case is that the subject property was transferred under respondents' names in a prohibited *pactum comissorium* manner, but not through fraudulent means or in bad faith.

Besides, the award of moral damages must be anchored on a clear showing that mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury was actually experienced.^[96] There is no better witness to this experience than petitioner herself, but she failed to testify thereon, even in her judicial affidavit. Hence, there is no basis for the award of moral damages.

As for the award of attorney's fees, Art. 2208 of the New Civil Code provides that in the absence of stipulation, attorney's fees cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.^[97] Being the exception rather than the rule, an award of such fees requires compelling reason before it may be granted. Even when a claimant is compelled to bring his/her cause to court or incur

expenses to protect his/her rights, attorney's fees still may not be awarded as part of damages where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of its cause.^[98]

In this case, petitioner neither proven bad faith on the part of respondents nor the existence of an agreement between them as to warrant the award of attorney's fees. In fine, there is no basis to grant attorney's fees pursuant to Art. 2208 of the New Civil Code.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The October 26, 2017 Decision and the April 12, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 104327 are **REVERSED** and **SET ASIDE**.

The Complaint for Recovery of Possession and Ownership of Real Property with Damages docketed as Civil Case No. 10-124055 is **DISMISSED** for lack of merit.

Transfer Certificate Title No. 286305 in the name of respondents Nar Christian D. Carpio and Cecilia Cao Carpio, is declared **VOID** and **CANCELLED**. The Register of Deeds of Manila City is further **ORDERED** to **REINSTATE** Transfer Certificate of Title No. 267017 in the name of Primitiva Cayanan Caamic, subject to the equitable mortgage right of respondents to foreclose the same subject property.

SO ORDERED.

Hernando, Zalameda, Rosario, and Marquez, JJ., concur.

* Also referred to as "Anna Liza C. Singson" in some parts of the *rollo* (see *rollo*, p. 110).

^[1] *Rollo*, pp. 14-39.

^[2] *Id.* at 40-50; penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Sesonando E. Villon and Manuel M. Barrios.

^[3] *Id.* at 52-54.

^[4] *Id.* at 110-116; penned by Presiding Judge Paulino Q. Gallegos.

^[5] *Id.* at 64-70.

^[6] *Id.* at 71.

^[7] *Id.* at 41 and 65.

^[8] *Id.* at 87.

^[9] *Id.* at 41 and 67.

^[10] *Id.* at 68-69.

^[11] *Id.* at 81-85.

^[12] *Id.* at 86.

^[13] *Id.* at 42.

^[14] *Id.* at 106-109.

^[15] *Id.* at 43.

^[16] *Id.* at 90.

^[17] *Id.* at 102.

^[18] Records, p. 95.

^[19] *Id.* at 96.

^[20] *Id.* at 112-114.

^[21] *Id.* at 112-113.

^[22] *Rollo*, pp. 112-113.

^[23] *Id.* at 114.

^[24] Records, pp. 118-120.

^[25] *Id.* at 130.

^[26] *Rollo*, p. 116.

^[27] *Id.* at 115.

^[28] Article 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of article 1616 and other stipulations which may have been agreed upon.

^[29] Article 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

(1) The expenses of the contract, and any other legitimate payments made by reason of the sale; (2) The necessary and useful expenses made on the thing sold.

^[30] *Rollo*, pp. 115-116.

^[31] *Records*, p. 338.

^[32] *CA rollo*, p. 37.

^[33] *Id.* at 43-44.

^[34] *Rollo*, p. 47.

^[35] *Id.* at 48-49.

^[36] *Id.* at 49.

^[37] *Id.*

^[38] *CA rollo*, pp. 114-122.

^[39] *Rollo*, p. 20.

^[40] 746 Phil. 852 (2014).

^[41] *Rollo*, pp. 22-26.

^[42] *Id.* at 26-31.

^[43] *Id.* at 31-32.

^[44] *Id.* at 163-167.

^[45] *Id.* at 163-164.

^[46] *Id.* at 177-188.

^[47] *Id.* at 178-180.

^[48] **Department of Education v. Tuliao**, 735 Phil. 703, 711 (2014).

^[49] RULES OF COURT, Rule 133, Sec. 1.

^[50] **Tabuzo v. Gomos**, 836 Phil. 297, 316-317 (2018).

^[51] *Rollo*, pp. 75-76.

^[52] *Id.* at 72-74.

^[53] Article 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

- (1) When the price of a sale with right to repurchase is unusually inadequate;
- (2) When the vendor remains in possession as lessee or otherwise;
When upon or after the expiration of the right to repurchase another
- (3) instrument extending the period of redemption or granting a new period is executed;
- (4) When the purchaser retains for himself a part of the purchase price;
- (5) When the vendor binds himself to pay the taxes on the thing sold;
In any other case where it may be fairly inferred that the real intention of the
- (6) parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

^[54] Tolentino, A. M. (1992), *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, Central Books, p. 157, citing **Gloria-Diaz v. Court of Appeals**, 173 Phil. 621 (1978); **Balatero v. Intermediate Appellate Court**, 238 Phil. 531 (1987); **Buce v. Court of Appeals**, 241 Phil. 336 (1988); **Ramos v. Court of Appeals**, 259 Phil. 1122 (1989).

^[55] NEW CIVIL CODE, Art. 1603.

^[56] **Olino v. Medina**, 13 Phil. 379, 382 (1909).

^[57] *Records*, p. 230.

^[58] *Rollo*, pp. 163-164.

^[59] **Heirs of Delfin v. Rabadon**, 715 Phil. 569, 577 (2013).

^[60] **Spouses Yu Hwa Ping and Gaw v. Ayala Land, Inc.**, 851 Phil. 421, 442 (2019).

^[61] *Supra*.

^[62] *Id.* at 430.

^[63] **ECE Realty and Development, Inc. v. Mandap**, 742 Phil. 164, 171 (2014).

^[64] 858 Phil. 580 (2019).

^[65] *Id.* at 596.

^[66] Records, p. 96.

^[67] *Id.*

^[68] Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage. or dispose of them. Any stipulation to the contrary is null and void.

^[69] **Dacquel v. Spouses Sotelo, G.R. No. 203946**, August 4, 2021.

^[70] **Spouses Solitarios v. Spouses Jaque**, *supra* note 40, at 877.

^[71] *Id.* at 877-878.

^[72] *Rollo*, p. 48.

^[73] Records, pp. 220-226.

^[74] *Id.* at 222-223.

^[75] *Rollo*, p. 86.

^[76] Tolentino, A. M. (1992), *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, Central Books, p. 157, citing **De Ocampo v. Zaporteza**, 53 Phil. 442 (1929); **Aquino v. Dealala**, 63 Phil. 582 (1936); **Ignacio v. Chua Hong**, 52 Phil. 940 (1929).

^[77] *Commentaries and Jurisprudence on the Civil Code of the Philippines*, *id.* at 157, citing

Macapinlac v. Gutierrez, 43 Phil. 770 (1922).

^[78] 198 Phil. 338 (1982).

^[79] *Id.* at 346-347.

^[80] 459 Phil. 264 (2003).

^[81] *Id.* at 279.

^[82] *Supra* note 40.

^[83] *Id.* at 879.

^[84] *Supra* note 69.

^[85] **Repuela v. Larawan**, 802 Phil. 821, 834-835 (2016); see also **Montevirgen v. Court of Appeals**, *supra* note 78, at 348.

^[86] 643 Phil. 267, 280-282 (2010).

^[87] *Id.* at 282.

^[88] **Amoroso v. Alegre**, 552 Phil. 22, 33-34 (2007).

^[89] *Id.* at 34.

^[90] **Reyes v. Jebsens Maritime, Inc., G.R. No. 230502**, February 15, 2022.

^[91] **Adriano v. Lasala**, 719 Phil. 408, 419 (2013).

^[92] **Spouses Ramos v. Obispo**, 705 Phil. 221, 230 (2013).

^[93] **Alonzo v. Cebu Country Club, Inc.**, 462 Phil. 546, 562 (2003).

^[94] **Saguid v. Court of Appeals**, 451 Phil. 825, 837 (2003).

^[95] **Spouses Ramos v. Obispo**, *supra*.

^[96] **Mahinay v. Velasquez**, 464 Phil. 146, 150 (2004).

^[97] **Daquel v. Spouses Sotelo**, *supra* note 69.

^[98] *Id.*

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