

## THE SPOUSES ANTONIO JAYME AND ANA SOLIDARIOS, PETITIONERS VS. HON. JUDGE NESTOR ALAMPAY AND BENITO ONG, RESPONDENTS.

*G.R. No. L-39592. January 28, 1975*

Ponente: TEEHANKEE, J.

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### TEEHANKEE, J.:

In this review on pure questions of law of respondent court's granting of the motion to dismiss petitioners' action for reformation of instrument, the Court reverses and remands the case for trial and adjudication on the merits. The Civil Code provides that where, as alleged in the complaint, two parties agree upon the mortgage of real property but the instrument states that the property is sold absolutely or with a right of repurchase, an action for reformation of the instrument is proper. The prescriptive period must be determined on the basis of the allegations of the complaint for reformation of instrument and not on the counter-allegations of the motion to dismiss (which must hypothetically admit the factual allegations of the complaint) that the transaction was actually a true sale (which is a matter of defense), an action for annulment of which would prescribe in the lesser period of four years. The existence of a bona fide mortgage in favor of a third party clearly constitutes no impediment to petitioners' action for reformation and recovery of title.

On November 29, 1972, petitioners-spouses filed a complaint against private respondent in the court of first instance of Negros Occidental presided by respondent judge for reformation of instrument and praying that the deed of absolute sale of the parcel of land in Bacolod City executed by them on December 24, 1964 in favor of private respondent which did not embody their true agreement be reformed and declared a contract of mortgage and that their property be returned to them upon their payment of the loan consideration of P16,500.00 and that they be awarded damages, attorneys' fees and costs.

In their complaint, petitioners allege that "on December 24, 1964 the plaintiffs and the defendant Ong entered into an agreement whereby they agreed that the plaintiffs will borrow from the defendant the sum of P 16,500.00 on the security of the parcel of land above mentioned;" "that the deed of sale does not embody the true agreement of the parties which was to constitute a mortgage over Lot No. 270-A, Bacolod Cadastre above mentioned to secure payment of the loan of P16,500.00;" "that plaintiffs acceded to the condition required by the defendant Ong (to execute in his favor a deed of sale) for the reason that they reposed great confidence in said defendant, being a good family friend and because they were in dire need of money;" "that simultaneous to the execution of the deed of sale, Annex A, the defendant Ong executed in favor of the plaintiff an option (for six months) to purchase the x x x parcel of land for the same sum of P16,500.00;" that since the purported sale up to now, petitioners "continue to occupy part of the premises without paying rentals to the defendant; moreover, plaintiffs collect up to the present time all the rentals due from the other occupants of the premises;" that the "sum of P16,500.00 x x x is grossly inadequate for purpose of definite sale x x x;" that the "plaintiffs had on several occasions offered to the defendant Ong to pay the sum of P16,500.00 representing the loan . . .;" that the plaintiffs are "willing and ready to pay defendant the loan of P16,500.00 plus lawful interest if due;" that "due to the defendant Ong's unjust

refusal to execute the proper document of mortgage and to accept plaintiffs payment of their loan to him they suffered damages." [1]

Respondent filed his answer with counterclaim and raised the defense of prescription in his answer. Respondent court after pre-trial directed respondent to raise the issue of prescription squarely in a motion to dismiss. Petitioners filed their opposition to the dismissal motion and after hearing, respondent court issued its order of June 10, 1974 granting the motion to dismiss and dismissing petitioners' case.

No evidence on the sole issue of prescription was received by respondent court at the hearing of the dismissal motion. It merely relied on the allegations of the complaint and the pleadings granted dismissal on two grounds, to wit,

1. The proper remedy of petitioners on the basis of the complaint is annulment of the sale on the ground of "vitiating consent" which action has prescribed within the statutory four-year period citing Article 1391, Civil Code; [2] and
2. The existence of a mortgage for P100,000.00 over the lot executed by respondent in favor of Jose del Castillo [3] who is a mortgagee in good faith presents a legal impediment to petitioners' action for reformation of instrument and recovery of the property free from all liens and encumbrances.

Reconsideration was peremptorily denied in respondent court's order of August 5, 1974. Hence, the present petition for review on certiorari on pure questions of law. The Court per its resolution of January 13, 1975 in view of the simple issues involved resolved to consider the case as a special civil action and respondent's motion to dismiss as his answer to the petition in order to expeditiously dispose of the legal questions presented without the need and expense of parties' briefs.

The petition has merit and calls for the setting aside of the dismissal order.

1. Respondent court manifestly erred in holding that petitioners' action prescribed four years after the execution of the questioned deed of sale on the premise of its unsupported pre-judgment in its dismissal order (without trial and evidence) that "the ultimate agreement of the parties (was) for the definite sale and conveyance (of the property)" [4] and that petitioners' action "would involve, not the reformation of said document of sale into a mortgage as they so contend, but inherently the annulment itself of the deed of sale and only because of an alleged vitiating consent of the plaintiffs in acceding to the conditions required by the defendant." [5]

Respondent court instead of disregarding, should have adhered to the established rule that in motions to dismiss, the allegations of the complaint are deemed to be hypothetically admitted. Here, the complaint for reformation of instrument clearly alleged that the deed of sale did not express the true agreement of the parties and should be reformed into the mortgage that it actually was and prayed that petitioners be allowed to redeem the property by repaying the loan of P16,500.00 (the true value of the property being much more, as evidenced by the mortgage loan for P 100,000.00 which respondent in turn secured on it.) Such allegations are binding for purposes of the dismissal motion and therefore the applicable prescription period for such actions based upon a written contract and for reformation thereof as provided by law is ten (10) years as provided in Article 1144, Civil Code. [6]

Such right to reformation is expressly recognized in Article 1365 of the Civil Code which provides that "If two parties agree upon the mortgage or pledge of real or personal property but the instrument states that the property is sold absolutely or with a right to repurchase, reformation of the instrument is proper."

Petitioners' action for reformation and recovery of title was brought on November 29, 1972 less than eight years after execution of the questioned deed on December 24, 1964 and had therefore not prescribed.

Respondent's counter-theory that the questioned contract was in truth and reality a bona fide sale is clearly a matter of defense, which has yet to be established at the trial and could not be availed of at the pre-trial stage to dismiss the case as if it were already a proven fact, contrary to the very allegations of fact of the complaint which petitioners must be given an opportunity and their day in court to establish.

2. Respondent court's other ground for dismissal, to wit, that the existing P100,000-mortgage of the property in favor of Jose del Castillo (whom the parties have conceded to be a mortgagee in good faith) constitutes an impediment to petitioners' action as an innocent party's "undisputed rights ... would be impaired and prejudiced" is clear error.

It is obvious that the mortgagee's rights over the property are recognized but that would in no way defeat petitioners' action for reformation and recovery of title to the property. If petitioners prevail, they simply would recover the title to the property, subject to the mortgage thereon in favor of del Castillo or as prayed for by them, respondent may be duly sentenced "to deliver title to the plaintiffs free from any encumbrances including the mortgage to defendant del Castillo"[7] which merely means that respondent would in such case be obliged and sentenced to discharge del Castillo's mortgage credit (which mortgage loan he obtained after all for his own exclusive benefit).

ACCORDINGLY, judgment is hereby rendered setting aside the dismissal order of June 10, 1974 and remanding the case to respondent court for trial and adjudication on the merits. Without pronouncement as to costs.

**SO ORDERED.**

Castro, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

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[1] Pars. 4 to 14 of petitioners' complaint, Annex A, petition; notes in parentheses supplied.

[2] "Art. 1391. The action for annulment shall be brought within four years. This period shall begin:

In cases of intimidation, violence, undue influence, from the time the defect of the consent ceases. In case of mistake or fraud, from the time of the discovery of the same. . . ." (Civil Code).

[3] Del Castillo as mortgagee was originally impleaded as defendant in petitioners' complaint, but as per the pre-trial order of Jan. 16, 1974, Annex C, petition, petitioners agreed to withdraw their complaint against him in the absence of evidence to impeach his character as a mortgagee in good faith and the court dismissed the case as against him.

[4] Rollo, p. 7.

[5] Idem, p. 8.

[6] "Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- 1) Upon a written contract;
- 2) Upon an obligation created by law;
- 3) Upon a judgment (n)" (Civil Code).

[7] Rollo, pages 17-18.

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