

**ANGEL VILLARICA AND NIEVES PALMA GIL DE VILLARICA,
PETITIONERS, VS. THE COURT OF APPEALS, JULIANA MONTEVERDE,
GAUDENCIO CONSUNJI AND JOVITO S. FRANCISCO, RESPONDENTS.**

G.R. No. L-19196. November 29, 1968

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

On May 19, 1951, the spouses Angel Villarica and Nieves Palma Gil de Villarica sold to the spouses Gaudencio Consunji and Juliana Monteverde a lot containing an area of 1,174 sq. meters, situated in the poblacion of the City of Davao, for the price of P35,000.00. The instrument of absolute sale dated May 19, 1951 (Exh. "B"), in the form of a deed poll, drafted by Counselor Juan B. Espolong who had been appointed by the Villaricas as their agent to sell the lot, was acknowledged on May 25, 1951, before the same Juan B. Espolong who was also a Notary Public. The public instrument of absolute sale and the vendors' TCT No. 2786 were delivered to the vendees. On the same day, May 25, 1951, the spouses Consunji executed another public instrument, Exh. "D", whereby they granted the spouses Villarica an option to buy the same property within the period of one year for the price of P37,750. In July, same year, the spouses Consunji registered the absolute deed of sale, Exh. "B", in consequence of which TCT No. 2786 in the names of the spouses Villarica was cancelled and a new TCT No. 3147 was issued in the names of the spouses Consunji. In February, 1953, the spouses Consunji sold the lot to Jovito S. Francisco for the price of P47,000 by means of a public instrument of sale Exh. "4". This public instrument of sale was registered in view of which TCT No. 3147 in the names of the spouses Consunji was cancelled and a new TCT in the name of Jovito S. Francisco was issued.

On April 14, 1953, the spouses Villarica brought an action in the Court of First Instance of Davao against the spouses Consunji and Jovito S. Francisco for the reformation of the instrument of absolute Sale, Exh. "B", into an equitable mortgage as a security for a usurious loan of P28,000 alleging that such was the real intention of the parties. Defendants answered that the deed of absolute sale expressed the real intention of the parties and they also alleged a counterclaim for sums of money borrowed by the plaintiffs from the Consunjis which were then due and demandable. After trial, the Court of First Instance of Davao rendered its decision holding that the instrument of absolute sale, Exh. "B", was really intended as an equitable mortgage. Judgment was accordingly rendered reforming the deed of absolute sale into an equitable mortgage. Judgment was likewise rendered in favor of defendants Consunjis on their counterclaim for sums of money. Judgment was also rendered in favor of defendant Francisco as purchaser in good faith. Both parties appealed to the Court of Appeals.

On September 15, 1961, the Court of Appeals rendered its decision finding that the public instrument of absolute sale, Exh. "B", expressed the true intention of the parties and that the defendants-appellants' (Consunjis) 'counterclaim for sums of money was substantiated by the evidence. Accordingly the Court of Appeals rendered judgment as follows:

"WHEREFORE, the judgment appealed from is reversed and the complaint is dismissed as to the defendant spouses, and the plaintiffs are ordered to pay to them their remaining indebtedness of fifteen thousand

(P15,000.00) pesos with interest at 5% from July 7, 1951. That part of the judgment dismissing the complaint as to Jovito S. Francisco is hereby affirmed, with the modification that the attorney's fees in the sum of P2,350.00 awarded to him is eliminated. The present case is not one of those enumerated in Article 2208 of the New Civil Code where attorney's fees may be recovered. Costs against the plaintiffs-appellants."

On December 6, 1961, the spouses Villarica, plaintiffs-appellants in the Court of Appeals, petitioned the Supreme Court for certiorari or review of the decision rendered by the Court of Appeals. The petition was given due course and the decision of the Court of Appeals is now before us for review on questions of law.

Petitioners contend that the Court of Appeals erred in finding that the public instrument of absolute sale, Exh. "B", expressed the true intention of the parties, arguing that under Article 1604 in relation to Articles 1602 and 1603 of the Civil Code, the instrument of absolute sale, Exh. "B", should be presumed as an equitable mortgage on the grounds that (1) the price of P35,000 was unusually inadequate; (2) the vendors remained in possession of the property sold; (3) the period of one year for repurchase granted in the instrument Exh. "D" was extended for one month; and (4) the vendors pay the taxes on the land sold. The contention is unmeritorious in view of the following considerations:

(1) The price of P35,000 was not even inadequate. The land sold was assessed for tax purposes at P8,870 effective 1950. It was purchased by the spouses Villarica from the Philippine Alien Property Custodian in October, 1950, for the price of P20,000. The Villaricas borrowed P7,400 from a Chinese named Domingo Lua Chin Lam and, with this borrowed money, made part payment of the price to the Philippine Alien Property Custodian. Then they mortgaged the land to the Philippine Alien Property Custodian as security for the P10,000 unpaid balance of the purchase price. One year later, on May 19, 1951, they sold the land by means of the instrument of absolute sale Exh. "B" to the Consunjis for the price of P35,000, thus making a profit of P15,000 in one year without having invested their own money in buying the land. On February 21, 1953, the Consunjis sold the land to Jovito S. Francisco for the price of P47,000, thus making profit of P12,000. The price of P70,000 found by the trial court to be the market price of the land at the time of the trial in 1956 was not the market price in 1951 when the Villaricas sold the lot to the Consunjis. Hence, it is evident that the price of P35,000 stated in the instrument of absolute sale Exh. "B" was the market price of the lot in 1951.

(2) The vendors did not remain in possession of the land sold as lessees or otherwise. On their request in order to help them in the expenses of their children in Manila, the vendors were merely allowed by the vendees to collect the monthly rents of P300 for five months up to October, 1951, on the understanding that the amounts so collected would be charged against them. But thereafter the vendees were the ones who collected the monthly rents from the tenants. It follows that the vendors did not remain in possession of the land as lessees or otherwise.

(3) In Exh. "D" the Consunjis as new owners of the lot granted the Villaricas an option to buy the property within the period of one year from May 25, 1951 for the price of P37,750. Said option to buy is different and distinct from the right of repurchase which must be reserved by the vendor, by stipulation to that effect, in the contract of sale. This is clear from Article 1601 of the Civil Code, which provides:

"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."

The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. Hence Exhibits "B" and "D" cannot be considered as

evidencing a contract of sale with pacto de retro. Since Exh. "D" did not evidence a right to repurchase but an option to buy, the extension of the period of one year for the exercise of the option by one month does not fall under No. 3, of Article 1602 of the Civil Code, which provides that:

"When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed."

(4) The taxes paid by the vendors were back taxes up to the time of the sale on May 19, 1951. The vendors had the obligation to pay the back taxes because they sold the land free of all liens and encumbrances. The taxes due after the sale were paid by the vendee.

The petitioners admit that they cannot now question the finding of the Court of Appeals that they fully received the price of P35,000 mentioned in the instrument of absolute sale Exh. "B". In addition, we noted that the petitioners acknowledged in writing (Exh. "4"-Consunji-Monteverde) dated May 28, 1951, having received full payment of said price of P35,000. In view hereof and of the foregoing considerations, petitioners' contention that Exhibits "B" and "D" were used as a device to cover a usurious loan, has absolutely no merit.

The findings of the Court of Appeals on the amounts due from the spouses Villarica to the spouses Consunji as loans, evidenced by promissory notes, after deducting partial payments made thereon being factual, cannot be reviewed.

PREMISES CONSIDERED, the judgment of the Court of Appeals is hereby affirmed, with costs against petitioners also in this instance.

Dizon, Makalintal, Zaldivar, Castro, and Fernando, JJ., concur.

Concepcion, C.J., and Reyes, J.B.L., JJ., in the result.

Sanchez, J., took no part.

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