

**MERCEDES T. RIVERA, JESUS F. LUNOD AND EPIFANIA MANAHAN,
PETITIONERS, VS. COURT OF APPEALS, FELIZARDO M. MARTINEZ
AND VICTORIA MAGAYANES?MARTINEZ, RESPONDENTS.**

G.R. No. L-44111. August 10, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Assailed in this petition for review on certiorari is the decision* of the Court of Appeals in CA-G.R. No. 53117-R, reversing and setting aside the decision of the Court of First Instance of Rizal, Branch XXVI (now Regional Trial Court), dismissing the complaint and counterclaim in Civil Case No. 15761, entitled Felizardo M. Martinez vs. Mercedes Teehankee Rivera.

The dispositive part of the decision reads as follows:[1]

WHEREFORE, the judgment appealed from is hereby reversed and set aside. Another one is hereby rendered declaring the Deed of Absolute Sale, Exhibit A, as a contract of sale with right of repurchase, and allowing the plaintiffs to redeem the same within a period of thirty (30) days from the finality of this judgment. Defendants-appellees shall pay the costs.

IT IS SO ORDERED.

The facts as succinctly stated by the Court of Appeals are as follows:[2]

Plaintiffs spouses were the owners of a 3-bedroom bungalow erected on a lot situated at Cambridge Street, Holy Family Village, Marikina, Rizal. They acquired the said property from Cecilia Estepa Manansala who had likewise transferred her rights over a contract to purchase the lot on which the house is erected from the Provident Securities Corporation which owns the said subdivision. The said transfer of rights is evidenced by a document dated March 31, 1970 (Exhibit 2).

On June 29, 1971, the plaintiffs executed a document entitled "DEED OF ABSOLUTE SALE", Exhibit A, whereby for and in consideration of the sum of P20,000.00 they sold to defendant Mercedes Teehankee Rivera the following described property:

"A three-bedroom bungalow, with all the improvements, furnitures, appliances and fixtures thereon, situated in the Holy Family Village, Marikina, Rizal, particularly identified as No. ___ Cambridge Street and erected on Lot No. 38, Block No. 21 of said Village,"

On November 27, 1971, defendant Mercedes Teehankee Rivera sold to her co-defendants, the spouses Jesus F. Lunod and Epifania Manahan-Lunod, the same property described above for the sum of P35,000.00, the transaction being evidenced by a notarial deed of absolute sale (Exhibit 4).

On January 18, 1972, the Lunod spouses filed an ejectment case in the Municipal Court of Marikina against herein plaintiff Felizardo Martinez, docketed therein as Civil Case No. 1989. On February 16, 1972, the plaintiffs, in turn, filed the present action before the Court of First Instance of Rizal, wherein it was docketed

as Civil Case No. 15761, praying that the deeds of sale, Exhibits A and 4, be declared null and void. The attempt of the plaintiffs to suspend the proceedings in the ejectment case due to the pendency of the civil action for the annulment of the deeds of sale was rejected by the Municipal Court of Marikina, and the ejectment proceeded to judgment rendered against the herein plaintiffs on September 1, 1972.

In their complaint in Civil Case No. 15761, the plaintiffs alleged that the transaction they had with defendant Mercedes Teehankee Rivera was not a sale but merely a mortgage; that it was made to appear as a sale subject to the agreement that the plaintiffs may repurchase the property within a period of four months from the date of the sale; that of the stated consideration of P20,000.00, the plaintiffs received only P18,000.00, the balance of P2,000.00 having been deducted by Mercedes Teehankee Rivera by way of usurious interest for the period of four months; that the 3-bedroom bungalow is worth P70,000.00, while the appliances, fixtures and furnitures contained therein are worth P40,000.00; and that the execution of the deed of sale, Exhibit A, was attended by fraud and effected by means of misrepresentation and other forms of machinations.

The defendants filed a common answer, denying the material allegations of the complaint and alleging as a special defense that the plaintiffs requested and were granted by the defendants the right to occupy the bungalow up to December, 1971 at a monthly rental of P250.00.

The Court a quo dismissed the complaint for the principal reason that the plaintiffs failed to adduce sufficient evidence to establish in a satisfactory manner their allegation that the execution of the deed of sale, Exhibit A, was attended by fraud and misrepresentation and other forms of machinations.

The petitioners raise the following errors:[3]

I.

THE COURT OF APPEALS ERRED IN ALLOWING A CHANGE OF THEORY ON APPEAL, AND RENDERING JUDGMENT BASED ON THIS NEW THEORY OF PRIVATE RESPONDENTS.

II.

THE COURT OF APPEALS ERRED IN CONSIDERING A THEORY ADVANCED BY PRIVATE RESPONDENTS, AND DECIDING THE CASE IN CONFORMITY THEREWITH WHEN THE SAME WAS NOT EVEN DISCUSSED OR ARGUED IN RESPONDENTS' BRIEF.

The crux of the controversy is whether or not there was indeed a change of theory when, in the complaint, the plaintiffs (private respondents) prayed for the declaration of the nullity of the Deeds of Sale (Annexes A and B, Complaint) while, on appeal, they prayed that they be allowed to redeem the property.

The petitioners contend that the theory of the private respondents in the court a quo is that the Deed of Sale (Annex "A") is null and void as the same does not reflect the real transaction between the parties, their true agreement being merely a loan, and that the Deed of Absolute Sale was intended to hide a usurious transaction. The petitioners submit that this theory is supported by the private respondents' prayer in their complaint that the Deed of Sale be declared null and void. Hence, the petitioners submit that a drastic change of theory occurred when on appeal, the private respondents, in their brief, prayed that they be allowed "to redeem the property with its appliances worth more than P20,000.00." The petitioners argue that "to claim one has the right to repurchase the property would be to (up)hold in the same instant the validity of the sale, because if there was no valid sale in the first place, there can be no right to repurchase. The so-called right to repurchase is not an independent right, for necessarily, it is always attached to a valid sale."

On the other hand, the private respondents counter that they did not change their theory as contained in their complaint. On appeal, they averred that the alleged change of theory is a mere conclusion of the petitioners not

supported by the pleadings. Further, they maintain that though it may be apparent, the claimed change of theory is not real because only the pleadings filed and the evidence presented in the trial court were considered on appeal; moreover, the complaint prayed "for such other reliefs as may be deemed just and equitable." And then, although they did not specifically pray in their complaint that they be allowed to redeem the property in question, they argue it can be clearly inferred from their allegations that they offered to sell the property to petitioner Rivera with the agreement that they be given the right to repurchase within four months from the date of sale.

The private respondents' position is well-taken. There was no change of theory of the case on appeal. There was no surprise sprang on the petitioners in the Court of Appeals, which surprise, after all, is the *raison d'être* of the prohibition against such a change of theory. The injunction against change of theory on appeal insures fairness in the proceedings; in other words, fair play or due process bars flip-flopping.

The theory of the case simply refers to the facts on which the cause of action is based. The facts are those alleged in the complaint and satisfactorily proven at the trial.

If the defendant believes that he can not intelligently answer, or otherwise plead, due to some vagueness or uncertainty in the allegations of the complaint, he can either move to dismiss^[4] or ask for a bill of particulars.^[5] Thus, in an early case,^[6] which is almost on all fours with the case at bar, we stated:

(1) In discussing the first point (that "the court below decided the case against her upon a theory different from that presented by the pleadings"), counsel insists that the object of the fourth cause of action as set forth in the complaint, was merely the annulment of the agreement of May 10, 1918, and did not include the redemption from the sale with the right to repurchase, nor a declaration that the sale was made for the purpose of securing a loan and, therefore, was only an equitable mortgage.

It is true that paragraph (c) of the prayer of the complaint might lead one to believe that only the annulment of the agreement in question was sought, but examining the allegations of the body of the complaint, especially paragraph (5) of the fourth cause of action, it will be found that facts are stated which, if true, are sufficient to sustain the judgment of the court below in regard to the character of the transactions between the plaintiff and the defendant Luisa Lim, and it is a well-known rule of pleading that the character of the cause of action is not determined by the prayer of the complaint, but by the facts alleged (21 R.C.L., 489; sec. 126, Code of Civil Procedure.)

The allegations were also sufficient to inform the defendants of the nature of the plaintiff's claims and to enable them to prepare their defense. These requirements fulfilled, the theories entertained by the parties become comparatively unimportant, as far as the soundness of the judgment is concerned. If the complaint was so vague and uncertain as to leave the defendants in doubt in regard to its meaning, timely objection should have been made by demurrer or by a motion to make the complaint more specific.

In the instant case, as correctly pointed out by the private respondents, the Court of Appeals based its decision, now assailed before us, on all the pleadings filed and on the evidence presented in the court a quo.

The complaint filed by the private respondents in the trial court a quo specifically avers:

3. That sometime in June, 1971, plaintiffs offered to sell aforesaid property to defendant Mercedes Teehankee Rivera for Twenty Thousand (P20,000.00) Pesos with the agreement that plaintiffs be given the right to repurchase the same within the period of four (4) months from and after the date of sale to which defendant agreed.

4. That in accordance with the agreement mentioned in the next preceeding paragraph, defendant Mercedes Teehankee Rivera then prepared a document purportedly to be a sale with right to repurchase of above-described property but included therein without the knowledge and consent of plaintiffs all the furniture,

appliances and fixtures in the said bungalow, and by means of machinations and misrepresentations convinced plaintiffs to sign the said document which later was discovered by plaintiffs to be a Deed of Absolute Sale. A copy of said Deed of Absolute Sale is hereto attached as Annex "A" and made an integral part of this complaint.

And then the same complaint prays, among others, that the Deeds of Sale, Annexes "A" and "B" thereof, be declared null and void. Prescinding from those allegations and from the prayer all clearly set out in the complaint, it is fair to conclude that the real purpose in asking for the nullity of the contract of sale is to enable the private respondents to recover or redeem the property they deeded in favor of Mercedes Teehankee Rivera. Thus the nature of the contract has been raised as an issue in the pleadings. It would be absurd to pray for the nullity of an agreement and stop there. There would be a vacuum and the law, like nature, abhors a vacuum.

The private respondents' first assignment of error (denominated grandly as "First Error of Civil Justice") in their brief in the Court of Appeals clearly shows that they persisted in their claim to entitlement of the right to recover, redeem, or repurchase. Thus, they interpose that "the court a quo erred in not annulling the sale and allowing the plaintiffs-appellants to repurchase the property in question." This assignment can not be construed as change of theory; it is persistence, plain and simple. It does not leave any interstice in the entire theory of the case. Consistency in the position of the private respondents runs throughout the presentation of their advocacy.

From the foregoing, we therefore find no reversible error in the findings and conclusions[7] of the Court of Appeals, to wit:

It being our finding that the contract entered into between the plaintiffs and defendant Mercedes Teehankee Rivera was in reality a sale with a right of repurchase, and the true nature of the contract having been raised in the pleadings, the plaintiffs are entitled to exercise the right to redeem the property within thirty (30) days from the finality of this judgment pursuant to the last paragraph of Article 1606 of the New Civil Code. The circumstance that the property had been sold by Mercedes Teehankee Rivera to the Lunod spouses is no bar to the exercise of this right. The right to redeem is a real right (*Mortena vs. Martinez*, 14 Phil. 541), and may be exercised against every possessor whose right is derived from the vendee a retro even if the second contract makes no mention of the right of repurchase (Art. 1608, *Ibid.*).

WHEREFORE, the petition is DENIED. The decision of the respondent court is AFFIRMED.

Costs against the petitioner.

THIS DECISION IS IMMEDIATELY EXECUTORY.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.

* Vasquez, Conrado M., ponente; Leuterio, Jose N. and Escolin, Venicio, JJ., concurring.

[1] Decision, Court of Appeals, 14-15; rollo, 39-40.

[2] *Id.*, 1-4; rollo, 26-29.

[3] Brief for the Petitioners, 1-4; rollo, 64 (9).

[4] Rule 16, The Revised Rules Of Court In The Philippines.

[5] *Id.*, Rule 12.

[6] Cabigao vs. Lim, 50 Phil. 844, 857-858.

[7] Decision, Court of Appeals, 39.

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