

SOCORRO MONTEVIRGEN, ET. AL., PETITIONERS, VS. COURT OF APPEALS, SPOUSES SERAFIN ABUTIN AND CARMEN SENIR, RESPONDENTS.

G.R. No. L-44943. March 17, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals promulgated on June 8, 1976 affirming in toto the Order of the Court of First Instance of Cavite, Branch III in Civil Case No. N-1609, promulgated on September 17, 1974.

The factual background of the case is as follows:

Petitioners Montevirgen filed an action against respondent spouses Serafin Abutin and Carmen Senir in the Court of First Instance of Cavite, Branch III, for the annulment of a deed of sale with pacto de retro, over a parcel of land situated in Barrio Alima, Bacoor, Cavite, title to which was transferred to respondents upon the registration of the deed of pacto de retro sale. On July 1, 1971, the trial court, by virtue of the agreement reached by the parties, rendered a decision declaring the transaction an equitable mortgage and fixing a period of ten (10) months from July 1, 1971 within which the petitioners must pay their obligation with legal interest, otherwise execution would follow.[1]

Petitioners having failed to pay their obligation within the ten-month period, respondents moved for execution of the decision of July 1, 1971. Petitioners opposed the motion for execution alleging that there must first be a foreclosure of mortgage upon failure to redeem and not an outright execution sale. Said opposition was denied by the trial court and an Order of Execution was issued on May 10, 1972. Upon implementation of said order, the Clerk of Court issued two writs of execution, the first, directing the Provincial Sheriff of Cavite to levy on the properties of petitioners to satisfy the sum of P57,500.00 plus legal interest of 12% thereon commencing from February 2, 1969 and the sum of P11,104.32 plus legal interest of 12% to commence from May 15, 1969; and second, directing the Provincial Sheriff to sell at public auction the described properties with all the improvements existing thereon.

Petitioners moved to quash the writ of execution alleging that said writ was at variance with the decision, firstly, because the decision merely directed the imposition of legal interest which is 6% per annum and secondly, because it included the new construction on the lot in question. On September 8, 1972, the lower court denied the motion to quash writ of execution. The Provincial Sheriff accordingly executed the writs. Upon motion filed by respondents, the sale was confirmed by the trial court in an Order dated September 25, 1972.

On October 5, 1972, petitioners filed a Motion to Annul the Sheriff's Certificate of Sale alleging again that the writ of execution was at variance and contrary to the decision and at the same time calling attention to the fact that on September 21, 1972 respondents demolished the old house in the subject premises. In an Order dated October 20, 1972, the trial court granted petitioner's Motion and ordered the writ of execution to be amended so "that the

new construction may not be the object of the occupation by the defendant and that the interest mentioned therein which is legal interest, must be 6%."

Respondents went to the Court of Appeals on certiorari (docketed as CA-G. R. No. SP-01813) alleging that the confirmation of the sale on September 25, 1972 divested the trial court of its jurisdiction and therefor its order amending the writ of execution was issued without jurisdiction. The Court of Appeals dismissed the petition in its Resolution of June 11, 1972. On appeal to this Court, this Court denied the petition for lack of merit in an Order dated November 6, 1973. Motion for reconsideration was again denied on December 7, 1973.

On July 24, 1974, respondents filed in the Court of First Instance another motion for execution sale on the ground that the previous auction sales conducted were declared void either from failure to conform with the judgment, or with the requirements of the law in the conduct of auction sales. This was opposed by petitioners on August 7, 1974 with prayer for the cancellation of T.C.T. No. 35236 then registered in the name of respondents, and the issuance of a new title in their names subject to equitable mortgage right of respondents. Replying to the opposition, respondents asked for the enforcement of the judgment of July 1, 1971 by asking for an auction sale. In resolving the issues posed, the trial court held:

"Under the circumstances this Court holds that plaintiffs cannot demand reconveyance and there is even no need for an auction sale of this property since this property was already titled in the name of the defendants as early as February 24, 1969 even before this action was instituted.

x x x

"In the case at bar, the foreclosure sale effected by the Provincial Sheriff was a ceremonial futility because as may be gleaned in the Decision the only right recognized in favor of plaintiffs Socorro Montevirgen was to repurchase the property within the 10 month period prescribed therein; if they had done so, then the defendants would have been ordered to reconvey the property to the plaintiffs; having failed to do so, they have lost the equity recognized in their favor by the Decision. x x x

"WHEREFORE, in view of the foregoing, this Court denied defendants' Motion for Auction Sale as well as the reliefs prayed for by plaintiffs in their opposition dated August 7, 1974 and hereby declares that the execution of the Decision of July 1, 1971 does not require the holding of any auction sale; that the auction sale previously held were all unnecessary; that upon failure of plaintiffs to pay their obligation within the ten month period from July 1, 1971, the absolute ownership over the land with the old construction, described in the Deed of Pacto de Retro Sale, and now registered in the name of defendants under T.C.T. No. 35236 of the Register of Deeds of the Province of Cavite has become consolidated in the defendants, and relieved of plaintiffs equity. Plaintiff's right to remain in possession in a concept other than owner should be threshed out in an unlawful detainer or other appropriate possessory action including the fixing of rentals as this suit was filed for the purpose only of determining the nature of the Deed of Sale with Pacto de Retro."[2](Underscoring supplied)

On appeal to the Court of Appeals, the trial court's order of September 17, 1974 was affirmed in toto in its decision of June 8, 1976, holding as follows:

"But this notwithstanding, the points sticking out like a sore thumb in appellants thesis is, that he has not to this date paid his obligation to the appellees within the 10 month period as required in the judgment. This in fact gave occasion for the judgment to become executory. As said earlier, the judgment was the result of an agreement by and between the parties and this being so, the judgment became executory at the end of the 10 month period. When it was executed, the execution may be reasonably considered as a foreclosure of the mortgage. The appellant did not seek to redeem the same as he has not to this date moved in that direction. Therefore, his right to redeem has long since expired."[3]

Upon denial of these two Motions for Reconsideration dated August 9, 1976 and October 18, 1976, petitioners

filed this instant petition raising questions of law in which, if reduced to essentials, the main issue would be whether or not respondent Court of Appeals correctly affirmed the trial court's Order of September 17, 1974 interpreting, in effect, its Decision of July 1, 1971. Pursuant to Our Resolution of March 9, 1977, this Court issued a Temporary Restraining Order restraining private respondents from entering into any transaction affecting or disposing of the land in question.

The appeal is impressed with merit.

1. Perusal of the Court of Appeals' decision affirming in toto the trial court's order of September 17, 1974, shows that it has interpreted the trial court's decision of July 1, 1971 to mean that upon failure of the petitioners to pay their obligation within the period as fixed in the judgment, petitioners also lost the right to redeem the property and as such, the absolute ownership over the subject premises has become consolidated in the respondents.

We do not agree with the respondent court's interpretation. It contradicts the agreement between the parties and the declaration in the decision that the contract between the parties was an equitable mortgage, not a pacto de retro sale. It would produce the same effect as a pactum commissorium, forfeiture clause that has traditionally been held as contrary to good morals and public policy and, therefore, void.[4]

Thus, in the analogous case of *Guanzon vs. Argel*[5], this Court speaking thru Justice J.B.L. Reyes, affirmed the lower court's decision denying petitioner Guanzon's prayer that the Provincial Sheriff be ordered to execute the necessary conveyance of the property in question in her favor and that she be placed in the possession thereof, for failure of private respondents Dumaraogs to pay the loan of P1,500 within the period also as specified in the judgment. As therein held:

"In no way can the judgment at bar be construed to mean that should the Dumaraogs fail to pay the money within the specified period then the property would be conveyed by the Sheriff to Guanzon. Any interpretation in that sense would contradict the declaration made in the same judgment that the contract between the parties was in fact a mortgage and not a pacto de retro sale. The only right of a mortgagee in case of non-payment of a debt secured by mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness. The mortgagor's default does not operate to vest in the mortgagee the ownership of the encumbered property, for any such effect is against public policy as enunciated by the Civil Code." [6]

The declaration, therefore, in the decision of July 1, 1971 to the effect that absolute ownership over the subject premises has become consolidated in the respondents upon failure of the petitioners to pay their obligation within the specified period, is a nullity, for consolidation of ownership is an improper and inappropriate remedy to enforce a transaction declared to be one of mortgage.[7] It is the duty of respondents, as mortgagees, to foreclose the mortgage if he wishes to secure a perfect title to the mortgaged property if he buys it in the foreclosure sale.[8]

2. Neither is the petitioners' right as a mortgagor in equity affected by the fact that the subject property was already titled in the name of respondents as early as 1969 even before the action was instituted. In the first place, it must be borne in mind that this equitable doctrine that deems a conveyance intended as security for a debt to be, in effect, an equitable mortgage, operates regardless of the form of the agreement chosen by the contracting parties as the repository of their will. Equity looks through the form and considers the substance, and no kind of engagement can be allowed which will enable the parties to escape from the equitable doctrine adverted to. In other words, a conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be devised.[9]

In the second place, the circumstance that the land has been judicially registered under the Torrens System does not change or affect civil rights and liabilities with respect thereto except as expressly provided in the Land

Registration Act (sec. 70); and as between the immediate parties to any contract affecting such lands, their rights will generally be determined by the same rules of law that are applicable to unregistered land.[10]

Finally, the circumstance that the original transaction was subsequently declared to be an equitable mortgage must mean that the title to the subject land which had been transferred to private respondents actually remained or is transferred back to petitioners herein as owners-mortgagors, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the owner-ship remains with the mortgagor (Art. 2088, New Civil Code). This is precisely the reason why this Court issued in its Resolution of March 9, 1977 a Temporary Restraining Order, restraining private respondents from entering into any transaction affecting or disposing the land in question.

IN VIEW OF THE FOREGOING, the decision of respondent Court of Appeals dated June 8, 1976 affirming in toto the trial court's order of September 17, 1974 is hereby reversed. The Temporary Restraining Order issued pursuant to Our resolution of March 9, 1979 is hereby made permanent.

The Register of Deeds of the Province of Cavite is hereby ordered to cancel T.C.T. No. 35236 registered in the name of private respondents and to issue a new title in the name of herein petitioners subject to the equitable mortgage rights of private respondents.

SO ORDERED.

Makasiar, Fernandez, Guerrero, Melencio-Herrera, and Plana, JJ., concur. Teehankee, J., (Chairman), concurs in a separate opinion.

[1]pp. 1-3, Record on Appeal, p. 39, Rollo.

[2]p. 27, Rollo.

[3]p. 29, Rollo.

[4]Reyes vs. Nebrija, 98 Phil. 639; Tan Chun Tic vs. West Coast Life Ins. Co., 54 Phil. 361; Perez vs. Cortez, 15 Phil 211.

[5]33 SCRA 474.

[6]Art. 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.

[7]Reyes vs. de Leon, 20 SCRA 369.

[8]Basilio vs. Encarnacion, 5 Phil. 360.

[9]Macapinlac vs. Gutierrez Repide, 43 Phil. 770.

[10]Ibid.

CONCURRING OPINION

TEEHANKEE, J.:

I concur. The long final and executory judgment of July 1, 1971 declaring the transaction an equitable mortgage and fixing a period of ten months within which petitioners-mortgagors must pay their obligation of P57,000.00 with legal interest (of six [6%] per cent per annum) from February 2, 1969 and the further sum of P11,104.32 with legal interest (of six [6%] per cent per annum) from May 15, 1969, failing which execution would follow, has at this late date not been executed due to the errors committed by the trial court of declaring that there was no need of such execution of judgment.

The ten-month grace period granted in the 1971 decision has long expired, almost eleven years afterwards. It should be understood that if upon finality of this Court's judgment at bar (and remand of the records, if any, to the trial court) petitioners-mortgagors shall not have discharged their indebtedness to respondents, the trial court should forthwith issue a writ of execution for satisfaction of said mort-gage indebtedness (as adjudged in the 1971 decision) and no longer grant petitioners the 90-day grace period provided in Rule 68, section 2 - with the understanding that petitioners-mortgagors may prevent the sale by paying their whole indebtedness with interests on or before the date fixed by the sheriff for the sale of the properties and that if they so fail, respondents, as stated in the Court's opinion, may "secure a perfect title to the mortgaged property if (they) buy it in the foreclosure sale" (at page 5).

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