

**SPOUSES LORETO CLARAVALL AND VICTORIA CLARAVALL,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND
SPOUSES FRANCISCO RAMIREZ AND CAROLINA RAMIREZ,
RESPONDENTS.**

G.R. No. L-47120. October 15, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari of: (a) the decision of respondent Court of Appeals* promulgated on April 22, 1976 affirming the decision of the Court of First Instance of Isabela, Branch I, in Civil Case No. 2043; (b) its resolution dated June 22, 1977 setting aside its resolution of December 14, 1976 and reaffirming its decision; and (c) its resolution of September 29, 1977 denying petitioners' motion for reconsideration dated July 27, 1977, all in CA-G.R. No. 46364-R, entitled "Spouses Loreto Claravall and Victoria H. Claravall v. Spouses Francisco Ramirez, Jr. and Carolina P. Ramirez."

The dispositive portion of the decision of the Court of First Instance of Isabela, Branch I (Record on Appeal, p. 74) affirmed in toto by respondent court in its decision (Rollo, p. 124) reads as follows:

"WHEREFORE, the court renders judgment (a) dismissing the complaint of the plaintiffs Claravall as against the defendant Ramirez with costs against the plaintiffs; (b) declaring the document Exh. 'A', same as Exh.'1' and Exh. 'B', same as Exh. '5' as essentially an absolute sale, and an option to repurchase, respectively; (c) declaring the defendants herein as the owners in fee simple of the said property, described under paragraph 2 of the complaint and covered by TCT 28717; (d) no attorney's fee and no damages awarded; (e) dismissing the complaint of reconveyance filed by the intervenor as against the plaintiffs, it appearing that the property sought to be reconveyed had already passed to third and innocent purchasers for valuable consideration, Sec. 38, Act 496; (f) dismissing the complaint of intervention as against the defendant Ramirez. With costs against the intervenor; (g) ordering the Register of Deeds to cancel the lis pendens and any other encumbrances over TCT-28717."

The facts of the case as found by the Court of Appeals are as follows:

"Between the years 1952 to 1960, appellant Loreto Claravall and Victoria H. Claravall obtained loans from the Development Bank of the Philippines (DBP) in the amount of P52,000.00 for the construction of a commercial building on their property situated in the Municipality of Ilagan, Isabela. To secure the loan, a mortgage was executed upon said property in favor of the DBP. Claravall was unable to pay the amortization over said loan and the DBP threatened to foreclose the mortgage. However, Claravall was able to pay DBP by executing a deed of sale over the property in question with a 5-year option to repurchase the same with a certain Juan Ang-angan.

"On December 29, 1965, Claravall exercised the said right to repurchase the property from Ang-angan by obtaining a loan from spouses Francisco and Carolina Ramirez in the amount of P75,000.00. A deed of sale dated December 29, 1965 was executed over the same property by the Claravalls in favor of Ramirez.

"On that same day of December 29, 1965, another instrument was entered into by Claravall and Ramirez which granted Claravall an option to repurchase the property in question within a period of two (2) years from December 29, 1965 but not earlier nor later than the month of December, 1967, for the sum of P10,000.00 payable at the time of repurchase.

"At the expiration of the 2-year period, appellant Claravall failed to redeem the property in question and because of this they brought suit against Francisco and Carolina Ramirez to compel the latter to sell the property in question back to them (Claravall) as per the second contract (Exhibit B) executed on December 29, 1967." (Rollo, pp. 122-124)

Pending trial of the case, a complaint in intervention was filed by one Domingo G. Herman alleging that he is a brother of plaintiff Victoria H. Claravall (one of the petitioners herein) and owner of 1/2 of the entire property as his inheritance from their deceased parents and that plaintiff Victoria H. Claravall obtained a certificate of title by means of fraud. He prays that the contract between plaintiffs and defendants be declared null and void with respect to his 1/2 legitimate share of the property in question (Record on Appeal, p. 53).

The lower court rendered judgment in favor of defendants, the Ramirez spouses, (private respondents herein) which was affirmed in toto by respondent court in its decision promulgated on April 22, 1976 (Rollo, p. 122).

On June 4, 1976, petitioners as plaintiffs-appellants filed with respondent court a motion for reconsideration of its decision on the grounds that respondent court: (1) should have declared that the transaction between plaintiffs-appellants and defendants-appellees is one of equitable mortgage, or at the very least, one of sale with pacto de retro; and (2) should not have decided the appeal by merely resolving the first and second assignments of errors, leaving the two remaining assigned errors unresolved which could have altered the result of the assailed decision (Rollo, p. 132).

Finding the motion meritorious, respondent court in a resolution dated December 14, 1976 ordered the remand of the records of the case to the court of origin for further proceedings, particularly to receive the testimonies of Juan dela Rosa, Maximo Amurao, Cornelio Lim, Juan Ang-angan and Mrs. Claravall based on its finding that appellants' former counsel had taken a course of action jeopardizing the substantial rights of the spouses Loreto and Victoria Claravall (Rollo, p. 207).

Feeling aggrieved by said resolution of the case, defendants-appellees on January 6, 1977, moved for the reconsideration of the resolution of December 14, 1976 on the ground that the resolution is contrary to law and the facts (Rollo, p. 211) and then on January 18, 1977 filed a supplemental motion for reconsideration (Rollo, p. 218). On January 24, 1977, private defendants-appellees also filed a motion for leave to submit affidavits as integral part of their motion for reconsideration (Rollo, p. 223) which affidavits were admitted by respondent court on February 10, 1977 (Rollo, p. 231).

On January 27, 1977, Associate Justice Samuel F. Reyes inhibited himself from further participation in the disposition of the case "in view of certain 'influences' that have lately made themselves felt, especially because the case arose from Isabela, my home province" (Rollo, p. 232).

On June 22, 1977, respondent Court promulgated its questioned resolution settings aside its previous resolution dated December 14, 1976 and reaffirming its decision promulgated on April 22, 1976 (Rollo, p. 257).

The subsequent motion for reconsideration of the resolution of respondent Court dated June 22, 1977 filed by petitioners on July 27, 1977 (Rollo, p. 269) was denied by respondent Court on September 29, 1977 (Rollo, p. 314).

Hence, this petition filed with the Court on November 26, 1977 (Rollo, p. 11).

Petitioners assigned the following errors:

I

RESPONDENT COURT GRAVELY ERRED IN SETTING ASIDE ITS RESOLUTION DATED DECEMBER 14, 1976;

II

RESPONDENT COURT GRAVELY ERRED IN NOT HOLDING THAT RESPONDENT RAMIREZES WERE ESTOPPED FROM FILING THEIR MOTION FOR RECONSIDERATION DATED JANUARY 6, 1977;

III

RESPONDENT COURT GRAVELY ERRED IN HAVING ENTERTAINED AND ACTED UPON THE MOTION FOR RECONSIDERATION OF RESPONDENT RAMIREZES DESPITE THE FACT THAT SAID MOTION FOR RECONSIDERATION WAS PRO FORMA;

IV

RESPONDENT COURT GRAVELY ERRED IN CONSIDERING, ENTERTAINING AND PASSING UPON THE ISSUES FOR RECONSIDERATION FILED BY RESPONDENT RAMIREZES BEYOND THE FIFTEEN-DAY PERIOD PROVIDED IN THE RULES;

V

RESPONDENT COURT GRAVELY ERRED IN GRANTING RESPONDENT RAMIREZES MOTION FOR LEAVE TO SUBMIT AFFIDAVITS AS PART OF THEIR MOTION FOR RECONSIDERATION AND IN HAVING ADMITTED SAID APPENDED AFFIDAVITS DESPITE THE FACT THAT THE SAME WERE FILED BEYOND THE FIFTEEN-DAY PERIOD FIXED BY THE RULES AND ON THE FURTHER GROUND THAT THE SUBMISSION OF SAID AFFIDAVITS WHICH ARE HEARSAY WAS IMPROPER AT THAT STAGES OF THE APPEAL;

VI

RESPONDENT COURT GRAVELY ERRED IN DEPARTING FROM OR CHANGING ITS PREVIOUS FINDING THAT THE IRRESPONSIBILITY OR NEGLIGENCE OF PRIOR COUNSEL (ATTY. MINA) GREATLY JEOPARDIZED PETITIONERS' CAUSE AND THAT PETITIONERS WERE DENIED DUE PROCESS OF LAW BY THE FAILURE OF SAID PRIOR COUNSEL TO PRESENT PETITIONERS' EVIDENCE;

VII

RESPONDENT COURT GRAVELY ERRED IN HAVING GIVEN EMPHASIS AND CREDENCE TO AND INVOKED AS SOLID SUPPORT OF ITS CONCLUSION THE AFFIDAVIT OF ATTY. ALEJANDRO MINA WHEN IT SET ASIDE ITS RESOLUTION OF DECEMBER 14, 1976;

VIII

RESPONDENT COURT GRAVELY ERRED IN HAVING FOUND THAT ATTY. ALEJANDRO MINA DID NOT COMMIT A GRAVE MISTAKE WHEN HE HANDLED PETITIONERS' CASE BASED

MERELY ON THE PRINCIPLE THAT THE FINDING OF THE LOWER COURT IN THIS RESPECT SHOULD BE ENTITLED TO GREAT WEIGHT;

IX

RESPONDENT COURT GRAVELY ERRED IN HAVING STATED THAT THE TESTIMONY OF THE WITNESSES SOUGHT TO BE PRESENTED BY PETITIONER WOULD NOT PROVE THE COMPLAINT MERELY ON THE STRENGTH OF THE HEARSAY AFFIDAVIT OF ATTY. MINA WHO SOUGHT TO REFUTE HIS INCOMPETENCE OR NEGLIGENCE AND JUSTIFY HIS NON-PRESENTATION OF PETITIONERS' WITNESSES;

X

RESPONDENT GRAVELY ERRED IN HOLDING THAT THE ONLY ALLEGATION GIVEN IN THE COMPLAINT TO SUSTAIN THE PRAYER OF DECLARING EXHIBITS "A" AND "B" AS EQUITABLE MORTGAGE IS THAT PETITIONERS NEVER PARTED WITH THE PROPERTY IN QUESTION;

XI

RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT NONE OF THE CIRCUMSTANCES ENUMERATED IN ART. 1602 OF THE CIVIL CODE WAS EVER ALLEGED IN THE COMPLAINT SO AS TO ENABLE PETITIONERS TO PROVE THAT THE TRANSACTION BETWEEN PETITIONERS AND RESPONDENT RAMIREZES EMBODIED IN EXHS. "A" AND "B" AN EQUITABLE MORTGAGE;

XII

RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT PETITIONERS NEVER TRIED TO REPURCHASE THE PROPERTY IN QUESTION SIMPLY BECAUSE THE COMPLAINT PRAYED THAT EXHS. "A" AND "B" BE DECLARED AS EQUITABLE MORTGAGE;

XIII

RESPONDENT COURT GRAVELY ERRED IN RENDERING ITS DECISION ON APRIL 22, 1976 IN FAVOR OF RESPONDENT RAMIREZES;

XIV

RESPONDENT COURT GRAVELY ERRED IN CONCLUDING THAT THE DOCUMENTS EXHIBITS "A" AND "B" WERE SEPARATE AND DISTINCT;

XV

RESPONDENT COURT GRAVELY ERRED IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION DATED JULY 27, 1977;

XVI

RESPONDENT COURT CORRECTLY IMPUTED NEGLIGENCE OR INDIFFERENCE TO ATTY. TEOFILO LEONIN, RESPONDENT RAMIREZES' FORMER COUNSEL, BUT RESPONDENT COURT GRAVELY ERRED IN RELIEVING RESPONDENT RAMIREZES FROM THE CONSEQUENCES OF ATTY. LEONIN'S NEGLIGENCE AND INACTION SINCE RESPONDENT RAMIREZES THEMSELVES NEVER ASSAILED THE FAILURE OF ATTY. LEONIN TO APPEAR DURING THE ORAL

ARGUMENTS AND TO REFUTE THE ARGUMENTS CONTAINED IN PETITIONERS' MOTION FOR RECONSIDERATION AND MEMORANDUM;

XVII

RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT THE AFFIDAVITS WERE SUBMITTED BY ANOTHER LAWYER AND NOT BY ATTY. LEONIN, WHEN THE PLEADING ITSELF SHOWED THAT THE MOTION FOR LEAVE TO SUBMIT AFFIDAVITS WAS SIGNED BY A LAWYER IN BEHALF OF ATTY. LEONIN HIMSELF WHO FILED PIECEMEAL MOTIONS FOR RECONSIDERATION;

XVIII

THE CONCURRENCE OF HON. EMILIO GANCAYCO AND HON. MAMA BUSRAN IN REVERSING THE RESOLUTION OF DECEMBER 14, 1976 WHICH THEY ALSO PREVIOUSLY CONCURRED IN, SPELLS CIRCUMSTANCES GENERATING SUSPICION ON HOW RESPONDENT COURT ARRIVED AT COMPLETE REVERSAL OF ITS RESOLUTION OF DECEMBER 14, 1976; and

XIX

THE SUDDEN AND UNEXPLAINED INHIBITION OF HON. SAMUEL F. REYES FROM THE DIVISION AND THE APPOINTMENT OF HON. RAFAEL CLIMACO AS REPLACEMENT, BASED MERELY ON UNEXPLAINED PRESSURES UPON THE FORMER GIVES RISE TO SUSPICION IN ONE'S MIND THAT THE RESOLUTION OF JUNE 22, 1977 WAS NOT FAIRLY REACHED.

The main issue in this case is whether or not the Deed of Absolute Sale and Option to Repurchase executed by the parties must be treated as an equitable mortgage and not the absolute sale it purports to be.

The issue must be answered in the affirmative.

Articles 1602 and 1604 of the Civil Code state:

"ART. 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;
- (3) 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) 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;
- (6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing case, any money, fruits, or other benefit to be received by the vendees as rent or otherwise shall be considered as interest which shall be subject to the usury laws."

"ART. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale."

Under Article 1604 a contract purporting to be an absolute sale shall be presumed to be an equitable mortgage, should any of the conditions in Article 1602 be present. Otherwise stated, the presence of only one circumstance

defined in Article 1602 is sufficient for a contract of sale with right to repurchase to be presumed an equitable mortgage.

The records show that this case involves a series of transactions patterned after the earlier contract with Juan Ang-angan which was indisputably a loan, although the contract executed to secure the loan was an absolute deed of sale instead of a mortgage. Thus, it will be recalled, that petitioner first mortgaged subject property with the Development Bank of the Philippines as security for a loan of P52,000. To avert foreclosure of the mortgage, petitioners borrowed P52,000.00 from Juan Ang-angan with 12% interest, executing a deed of absolute in favor of Juan Ang-angan with right to collect the rentals from the lessees thereof. Later, the loan from Ang-angan was again liquidated and the property repurchased by borrowing the amount of P75,000.00 from private respondents. As in their transaction with Ang-angan, they executed a Deed of Absolute Sale in favor of private respondents to secure the loan with rights to collect rentals of the property. On the same date, December 29, 1965, three documents were executed, namely: (1) a Deed of Absolute Sale from Ang-angan in favor of petitioners, (2) a Deed of Absolute Sale from petitioners in favor of private respondents and (3) an Option to Repurchase within a period of two (2) years in favor of petitioners.

The consideration of the Deed of Absolute Sale executed by petitioners in favor of private respondent was the P75,000.00 borrowed by the former from the latter while the Option to Repurchase had a stated consideration of P10,000.00 "payable at the time of repurchase" or two (2) years after execution of the contract.

Before the expiration of the two-year period, that is December 31, 1967, it appears that petitioners were again negotiating for a loan of P100,000.00 from Mr. and Mrs. Maximino Amurao in order to pay private respondents the amount of P85,000.00. This time, petitioners failed to redeem their property, thereby necessitating the filing of an action in Court to compel private respondents to sell the property in question back to them.

It appears obvious that petitioners were holding on to their property despite financial difficulties to the extent that they had to incur bigger and bigger loans in order to be able to pay the usurious interest involved. In this regard, this Court has already laid down the rule that a pacto de retro sale may be deemed an equitable mortgage when executed due to urgent necessity for money of the apparent vendor (*Labasan v. Lacuesta*, 86 SCRA 16 [1978]).

Another circumstance that supports the presumption that the transaction between the parties was one of equitable mortgage is the inadequacy of the consideration for the supposed sale considering that the property involved is a parcel of land containing an area of 2,344 sq.m. with a three-storey commercial building made of concrete walling and G.I. roofing constructed thereon. For the construction of the said commercial building, petitioners were able to obtain a loan in 1952 from the Development Bank of the Philippines in the amount of P52,000.00 with the above-described commercial property as collateral (*Rollo*, p. 19). The property is located in the heart of Ilagan's commercial district. There is merit in petitioners' submission that if they were able to borrow with it as collateral, P52,000.00 from the DBP in 1952, the fair market value of the 2,344 sq. m. commercial lot and building at the time of the purported sale to private respondents on December 29, 1965 or thirteen (13) years later could have easily be within the range of P300,000.00. Hence, the alleged purchase price of P75,000.00 is, indeed, not only unusually inadequate but shocking to the conscience (*Rollo*, p. 141).

A third circumstance is the fact that on the date of expiration of the period to repurchase the property, private respondents, specifically Carolina Ramirez instead of accepting the repurchase price of the property on the pretext that she would not want to transact business with petitioners in the absence of her husband, executed a note extending the period of redemption to January 2, 1968 (*Rollo*, p. 333). It is well-settled that extension of the period of redemption is indicative of equitable mortgage (*Reyes v. de Leon*, 20 SCRA 369 [1967]; *Bundalian v. Court of Appeals*, 129 SCRA 645 [1984]).

From the foregoing transactions, it is evident that petitioners and private respondents entered into a contract of equitable mortgage and not a deed of absolute sale as the latter insisted.

But respondent Court of Appeals held the view that the two (2) contracts entered into by the petitioners and private respondents herein were separate and distinct and cannot be construed as an equitable mortgage and/or a sale with pacto de retro. Among others, respondent Court based its ruling on the doctrine laid down in the case of *Villarica v. Court of Appeals* (26 SCRA 189 [1968]), to the effect that 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.

However, under similar circumstances, as in the case at bar, this Court in a much later case (*Capulong vs. Court of Appeals*, 130 SCRA 248 [1984]), ruled otherwise, holding that respondent Court of Appeals was misled by the ruling in *Villarica v. Court of Appeals* where the situation was different.

Thus, this Court held:

“There is one important factor that differentiates the *Villarica* case from the instant petition. The document granting the vendors therein an option to buy back the property was executed six (6) days after the execution of the deed of sale whereas in the instant case the option to buy was embodied in a document executed at the same time that the questioned deed of sale was executed. The option to buy in the *Villarica* case was interpreted to be only an afterthought. On the other hand, the intent of the parties to circumvent the provision discouraging pacto de retro sales is very apparent in the instant case. The two contracts, the deed of sale and the documents embodying the option to repurchase were prepared, signed and notarized on the same day. The respondent court should have seen through a transparent effort to make it appear that the two transactions were not intimately related but distinct and separate as in the *Villarica* case. This should have put the Court on guard considering the other circumstances of the case from which no other conclusion could be derived except that the deed of absolute sale and the document giving the right to repurchase were, in fact, only one transaction of sale pacto de retro which must be construed as an equitable mortgage.” (*Capulong v. Court of Appeals*, *supra*).

As previously stated, the Deed of Absolute Sale and the Option to Repurchase in the instant case were executed by the parties and notarized on the same date, that is December 29, 1965 by the same notary public, Julian dela Rosa, as Document No. 171 and Document No. 172, respectively (*Brief for the Petitioners-Appellants*, p. 157). That the two documents are intimately related is also shown by the fact that in the Option to Repurchase, the consideration agreed upon for the repurchase of the properties is stated as P75,000.00 which is the same amount stated as consideration in the Deed of Absolute Sale. It is also expressly stated in the Option to Repurchase that as consideration for the execution thereof, the sum of P10,000.00 payable at the time of repurchase was agreed upon and all expenses incidental to the sale and repurchase shall be chargeable to the account of petitioners, same to be added to the consideration therein covenanted (*Record on Appeal*, p. 33).

Still further, this Court ruled that even if no usury was involved, a contract of loan with mortgage made to appear in paper as an absolute sale with a companion option to buy, is null and void (*Capulong v. C.A.*, *supra*).

WHEREFORE, the decision of respondent Court promulgated on April 22, 1976 and its resolution of June 22, 1977 are hereby Reversed and Set Aside. The deed of absolute sale between the parties with the option to repurchase is declared as an equitable mortgage and, petitioners are declared entitled to redeem the mortgaged property which shall be effected upon payment of their mortgage debt to private respondents in the total amount of P85,000.00 with legal rate of interest from December 31, 1967, the time the loan matured until it is fully paid.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

* Rendered by the 8th Division and penned by Associate Justice Samuel F. Reyes and concurred in by Justices Emilio A. Gancayco and Mama D. Busran.

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