

SPOUSES JOUSOR AGAJONA AND PLACIDA MARCELO, PETITIONERS-APPELLANTS, VS. MARCELO AGAJONA, RESPONDENT-APPELLEE.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

On appeal is the Decision[1] dated July 24, 2013 rendered by the Regional Trial Court (RTC), Branch 52 of Tayug, Pangasinan in the petition[2] filed by spouses Jousor Agajona and Placida Marcelo against Marcelo Agajona for consolidation of ownership, docketed as Civil Case No. T-2524.

The factual antecedents of the case are summarized by the RTC as follows:

Plaintiff Jousor Agajona and Marcelo Agajona are brothers.

On April 20, 1990, defendant Marcelo Agajona mortgaged the property to the plaintiffs as evidenced by a Deed of Sale with [the] Right to Repurchase for the sum of Php16,000.00. Defendant used the money for the schooling of his children. On July 14, 1990, defendant again mortgaged the same property to the plaintiffs for the sum of Php8,000.00 which he used in processing his papers for his deployment abroad. This transaction is covered by a Deed of Sale with Right to Repurchase. Finally[,] on November 31[3] [sic], 1990 defendant again obtained an additional loan of Php16,000.00 making his total obligation to the plaintiffs [sic] Php40,000.00. This led to the execution of a third Deed of Sale with Right to Repurchase on the same date to secure the payment of defendant's loan obligations.

In 1993, defendant obtained additional loans from plaintiffs as follows: Php5,000.00, February 01, 1990; Php5,000.00, May 13, 1993; Php4,000.00, February 19, 1994; and Php3,000.00 [date]. Plaintiffs provided the xerox copies of the receipts to the defendant. He did not complain because he trusted the plaintiffs.

Defendant owed the plaintiffs an aggregate amount of Php57,000.00.

On March 03, 2007, defendant paid Php57,000.00 to the plaintiff, and in effect, redeemed the property mortgaged. Plaintiff Placida Agajona returned the xerox copies of the receipts to the defendant which the latter kept inside his bag. Defendant and his wife left the bag in plaintiffs' house on March 04, 2007, and when they returned in the afternoon, they discovered that the contents of the bag were in disarray, and the receipts missing. Defendant informed plaintiff's [sic] daughter Jocelyn about the missing receipts, and the latter suggested that they ask the Brgy. Captain [sic] to prepare another receipt.

Defendant went to Brgy. Captain Alejo Agnes who then prepared a receipt denominated Recibo but plaintiffs refused to sign it. Defendant reported to the Brgy. Captain that he paid Php57,000.00 to the plaintiffs on March 03, 2007, and that on May 04, 2007, the receipts covering the said amount were given to defendant but the same were lost when he left his bag in plaintiffs' residence. This report was entered in the barangay blotter by Brgy. Captain Alejo Agnes.

Defendant agreed to plaintiffs' retention of [the] 800[-]sq. Meters [sic] portion of the mortgaged property where the house of their daughter was constructed provided the latter would give the defendant a right of way

with a width which can accommodate two vehicle[s] at a time. However, plaintiffs refused to yield to defendant's condition. Because of this, plaintiffs Placida Agajona and her daughter insist that they would just return the sum of Php57,000.00.

On July 24, 2013, the RTC issued a Decision, the decretal portion of which states:

WHEREFORE, the Court hereby renders judgment:

1. Declaring the Deed of Sale with Right to Repurchase dated November 31 [sic], 1990 as an equitable mortgage;
2. Declaring the mortgage as discharged, defendant having paid his loan obligations in the sum of Php57,000.00 on March 03, 2007; [and]
3. Directing the plaintiffs or anyone acting in their behalf to surrender possession of the subject property to the defendant.

SO ORDERED.[4]

The RTC concluded that the purported deeds of sale with right to repurchase were, taken together, constitute only an equitable mortgage based on its findings that: (a) there were three deeds of sale with right to repurchase involving the same parcel of land; (b) after the execution of the deed of sale with right to repurchase sometime in November 1990, respondent obtained additional loans, the payment of which was secured by the same property; (c) possession over the property was transferred to plaintiffs and the produce of the property is considered an interest of the loan; and (d) it took respondent seven years from the expiration of the 10-year redemption period to file the consolidation case. The RTC also held that respondent was able to prove payment of the total loan in the sum of P57,000.00 to plaintiffs.

Hence, this appeal. Appellants impute that the RTC erred in deciding the case in favor of the appellee on the basis of his inconsistent and self-serving allegations and fabricated documents.

THE APPEAL LACKS MERIT.

Article 1602 of the Civil Code provides:

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 extended;
- (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 cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. [Emphasis ours.]

An equitable mortgage is one which, although lacking in some formality, or form, or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law. The essential requisites of an equitable mortgage are: (1) the parties enter into what appears to be a contract of sale, (2) but their intention is to secure an existing debt by way of mortgage.[5]

Jurisprudence recognizes that there is no conclusive test to determine whether a deed purporting to be a sale on its face is really a simple loan accommodation secured by a mortgage. However, our case law consistently shows that the presence of even one of the circumstances enumerated in Article 1602 suffices to convert a purported contract of sale into an equitable mortgage.[6] In this case, what should be determined is whether the real intention of the parties in executing a deed of sale with a right to repurchase is to secure the payment of the P57,000.00 loan.

Even when a document appears on its face to be a sale with right to repurchase the owner of the property may prove that the contract is really a loan with mortgage by raising as an issue the fact that the document does not express the true intent and agreement of the parties. In this case, parol evidence then becomes competent and admissible to prove that the instrument was in truth and in fact given merely as a security for the repayment of a loan. And upon proof of the truth of such allegations, the court will enforce the agreement or understanding in consonance with the true intent of the parties at the time of execution of the contract.[7]

The records of the case reveal that appellee executed three “Deed[s] of Sale with the Right to Repurchase” dated April 20, 1990[8], July 14, 1990[9] and November 31, 1990[10] similarly covering a 3,554-square meter irrigated riceland situated in San Jose, San Nicolas, Pangasinan for and in consideration of P16,000.00, P8,000.00 and P40,000.00, respectively, in favor of appellants. Upon further scrutiny, it turned out, however, that appellee only received P26,000.00 as additional loan on November 31, 1990. Hence, the amount of P40,000.00 as indicated in the “Deed of Sale with the Right to Repurchase” dated November 31, 1990 represents the total amount of the loan. Then again, appellee and his wife, Jovita Agajona, subsequently received from appellants the total amount of P17,000.00 as additional “salda” or loans, which were duly covered by receipts[11] dated February 1, 1993, May 13, 1993, February 19, 1994 and June 16, 1994. In all, appellee received P57,000.00 from appellants.

Notably, appellee had earlier executed two deeds over the same property to secure the payment of loan amounting to P24,000.00. Clearly, the real intention of respondent in signing the documents was to provide security for the loan and not to transfer ownership over the property. Had the parties intended a sale, appellants would not have given appellee the additional sum of P17,000.00, of which P5,000.00 was denominated as “salda” or loan, after the execution of a deed of sale. These subsequent transactions after the supposed sale only show that the real intention of appellee in signing these documents was to provide security for the loan and not to convey or transfer ownership over the property. Based on the foregoing, it can be fairly concluded that appellee never consented to a sale.

It has been ruled that an arrangement wherein the ownership of the land is supposedly transferred to the buyer but nonetheless allows the seller to later on buy back the property is in the nature of an equitable mortgage.[12]

The deed of sale with right to repurchase did not transfer to appellants the ownership over the property. Even if appellants took possession of the property after the execution of the deed of sale, said possession was not in the concept of an owner. In fact, whatever produce derived from the property while the loan remained unpaid was merely considered an interest of the loan. Moreover, the deed allowed appellee to buy back the property. These circumstances are clear indications that the parties really intended the transaction to be an equitable mortgage. At the time of the execution of the said deed, the appellee never intended to depart with his ownership over the subject property but only to burden the same with an encumbrance to secure his indebtedness to appellants.

In *Raymundo v. Galen Realty and Mining Corporation*[13], the Court was emphatic in stating that “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 [the] 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 ownership remains with the

mortgagor.”

The explicit provision of Article 1602 that any of those circumstances would suffice to construe a contract of sale to be one of equitable mortgage is in consonance with the rule that the law favors the least transmission of property rights. To stress, the existence of any one of the conditions under Article 1602, not a concurrence, or an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract is an equitable mortgage.[14]

After a careful examination of the records, the Court finds paragraph 6, Article 1602 of the Civil Code applicable in that the transaction subject of the deed of sale with a right to repurchase was only an equitable mortgage and the relationship of the parties is altered from seller and buyer to mortgagor and mortgagee.

Also, while the presumption of equitable mortgage created in Article 1602 of the Civil Code is not conclusive and that it may be rebutted by competent and satisfactory proof of the contrary[15], appellants, in the instant case, failed to adduce sufficient evidence to support the claim that the transaction between them and appellee was one of sale with right to repurchase and not an equitable mortgage.

Consequently, there was no valid sale to appellants. Ownership over the property was not transferred to them for they were merely mortgagees.

In fine, with the findings that the sale was an equitable mortgage and that appellee had fully paid appellants the amount of loan, the RTC correctly directed appellants to surrender the possession of the property to appellee, the rightful owner.

WHEREFORE, premises considered, the instant petition is DENIED. The Decision dated July 24, 2013 of the Regional Trial Court, Branch 52 of Tayug, Pangasinan in Civil Case No. T-2524 is AFFIRMED.

SO ORDERED.

Diamante, F.N.[**], and Cruz, R.A., JJ., concur.

Gonzales-Sison, M.B.[*], Acting Chairperson Acting Chairperson, Special Second (2nd) Division

[*] Per Office Order No. 72-15-RDC dated March 6, 2015.

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[1] Rollo, pp. 17-27.

[2] Record, pp. 1-2.

[3] True date is November 1, 1990 as claimed by appellee.

[4] Id. at 27.

[5] *Dorado Vda. De Delfin v. Dellota, et al.*, G.R. No. 143697, January 28, 2008.

[6] Id.

[7] See *Olea v. Court of Appeals*, G.R. No. 109696, August 14, 1995.

[8] Record, p. 36.

[9] Id. at 37.

[10] Id. at 38.

[11] Id. at 39-42.

[12] See *Alexander and Jean Bacungan v. Court of Appeals, et al.*, G.R. No. 170282, December 18, 2008.

[13] G.R. No. 191594, October 16, 2013 citing *Montevirgen, et al. v. CA, et al.*, 198 Phil. 338 (1982).

[14] *Sps. Carlos and Eulalia Raymundo, et al. v. Sps. Dominador and Rosalia Bandong*, G.R. No. 171250, July 4, 2007.

[15] See *Sps. Ester Santiago and Domingo Cristobal, et al. v. Dizon*, G.R. No. 172771, January 31, 2008.

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