

EDITHA A. AUTICIO, PETITIONER-APPELLEE, VS. HERMANA DALA-APELADO, RESPONDENT-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Before Us in an Appeal[1] from the July 21, 2008 Decision[2] of the Regional Trial Court(RTC), Branch 1 of Borongan City, Eastern Samar in Civil Case No. 3734 with a dispositive reading as follows:

“WHEREFORE and in view of all the foregoing considerations, judgment is hereby rendered in favor of herein (petitioner-appellee) declaring the subject contract to be a true sale with right to repurchase or a Deed of Sale with Pacto de Retro. However, the matter of the real nature of the contract having been submitted for judicial resolution, and 4finding a doubt as to the real intention of the parties in executing the contract the application of the rule provided for under the third (3rd) paragraph of Article 1606 of the Civil Code having been meet and proper the herein vendor a retro, Hermana Dala Apelado, is hereby allowed to repurchase the property sold within 30 days in accordance with the above-stated Par. 3, Article 1606 of the Civil Code of the Philippines, in the amount of P16,8000 plus the sum of P114,000.00 as interest of the P12,000 for ninety four (94) months starting from September 11, 2001 to July 2008, or a total amount of One Hundred Thirty Thousand Eight Hundred (130,800.00) Pesos.

Further should respondent fails to repurchase the land within the above stated period, the petitioner should become the absolute owner of the land in question and her absolute ownership thereof is considered consolidated.

No attorney's fees, litigation expenses and cost, there being no legal basis for the award of the same.

SO ORDERED.”

The appeal prays that We set aside the assailed decision and enter another one declaring the contract between the parties as one of equitable mortgage and the interest of 10% null and void.

THE ANTECEDENTS

The instant appeal was commenced by a verified Petition for Consolidation of Ownership[3] under Article 1607 of the Civil Code, with Preliminary Injunction and Temporary Restraining Order filed by herein petitioner-appellee Editha A. Auticio against herein respondent-appellant Herman Dala Apelado. The petition alleged as follows:

1. (Petitioner-appellee) is of legal age and resident of Bgry, B. Baybay, Borongan, Eastern Samar, while (respondent-appellant) is likewise of legal age, and resident of Brgy. Lalawigan, Borongan, Eastern Samar, where summons may be served; Both parties have the capacity to sue and be sued;
2. On May 30, 2001, a Deed of Sale with Pacto de Retro⁴ was executed by (respondent-appellant) in favor of (petitioner-appellee) for the price of P16000 covering certain real property described in Tax Declaration No. 99-04019-00907 in the name of Hermana Dala of the Municipal Assessor of Borongan, Eastern Samar xxx

3. As clearly stipulated in the said deed, the period within which the right to redeem may be exercised was to expire in (1) or until February 12, 2002.

4. Notwithstanding the expiration of said period which period has never been extended, said (respondent-appellant) by themselves or any other person who may legally represent them has not exercised such right to redeem or repurchase the property sold;

5. Consequently, there has been consolidated in the (petitioner-appellee) herein the absolute ownership of the property by operation of law;

6. However (respondent-appellant), in bad faith is currently surreptitiously selling and encumbering or transferring title to the property or threatening to do so in favor of third parties at (petitioner-appellee's) expenses and to her damage and prejudice. Further, apparently to frustrate her efforts at consolidation.

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(Petitioner-appellant) thus prays that an order be issued by this Court declaring her as the absolute owner of the real property of the sale with pacto de retro, and directing the Register of Deeds of Borongan, Eastern Samar to make the necessary note of consolidation of ownership, the Municipal Assessor to cancel the Tax Declaration No. 99-04019-00907, in the name of (respondent-appellee) Hermana Dala and issue in lieu thereof a new one in accordance with law in the name of Editha A. Auticio.

The Answer[5] of respondent-appellant on the other hand, averred that:

1. She admits the allegations contained in paragraph 1 of the petition;

2. She denies specifically the allegations contained in paragraphs 2,3,4 and 5 of the petition, the truth is that the alleged Deed of Sale with Pacto de Retro did not express the true agreement of the parties, a loan on security was really intended, the real transaction between the parties was a borrowing and lending since the actual agreement of the parties is loan in the amount of P12,000 plus P4,800 as interest, secured by a real mortgage;

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4. The Deed of Sale with Pacto de Retro did not express the true and correct intention of the parties since (respondent-appellant) has only submitted to the dictation of the (petitioner-appellee) to execute the deed under the pressure of his want for immediate money, the agreement of the parties was one of loan with mortgage of real property, the loan was P12,000 but made to appear as P16,800.00 in the contract, the P4,800.00 constitutes as the interest;

5. (Respondent-appellant) had already paid the interest of P4,800.00 in the second week of September 2001, then she was extended another loan in the amount of P7,000.00 sometime in January 2002 with the same property as security;

6. (Respondent-appellant) is willing to deliver to, and deposit with the Honorable Court the amount of P19,000.00 representing payment to (petitioner-appellee) the amount loaned since the interest thereon was already paid, considering that (petitioner-appellee) refused to accept the same;

7. The price in the Deed of Sale with Pacto de Retro is grossly very much less than the market value of the property;

8. (Respondent-appellant) is actually still in possession of the real property subject of the deed;

9. (Petitioner-appellee) is not entitled to damages since the contract is usurious;

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Respondent-appellee thus prays that judgment be rendered dismissing the case for lack of merit, declaring null and void the Deed of Sale under Pacto de retro executed on May 11, 2001, (and) instead (declaring) the transaction between the parties as Equitable Mortgage; ordering petitioner to cease and desist from performing any acts upon the real property mortgage to the petitioner; ordering the petitioner to accept the sum of 19,000 as payment of the amount loaned; ordering petitioner to pay respondent 20, 000 as moral damages, 10000 as attorney's fees plus 1,000 per court appearance.

During trial, petitioner presented herself as her lone witness. She testified on the Deed of Sale Under Pacto De Retro[6] that was executed in her favor by respondent-appellant on May 11, 2001 involving a certain parcel of land covered by Tax Declaration No. 99-04019-00907[7]. She identified the signatures on the deed including that of respondent-appellant and that of witnesses Raquel Caspe, Clarissa Beatriz Ty and one whose name cannot be read. She likewise identified the signature of Atty. Renaldo Alconaba, the Notary Public. She testified further that the period to redeem the property was four months (not one year as averred in the petition) from the date of the document but respondent did not make any effort to redeem the property within the four month period; and that after she filed the instant case respondent-appellant intimated to her that she wants to redeem the property but she did not accept the offer anymore.

On the other hand, respondent-appellant also appeared for herself and testified that:

“she knows the petitioner-appellee in this case who lends money; that on May 11, 2001 she went to Mrs. Auticio to borrow money, but she was told that she can borrow money if she can give a collateral; that she produced a tax declaration of her lot which is not stated in the deed of sale under pacto de retro; that after which she went to Atty. Alconaba for the preparation of the document; that the loan she obtained from Mrs. Auticio was in the amount of P12,000; that the amount of P16,800.00 as appearing in the document of sale under pacto de retro includes the interest of 10% for six (6) months; that she is engage(d) in a buy and sell of fruits as her livelihood and sometime a land broker on selling lot; that she was engage(d) in brokering of selling lots since the year 2000; that as a broker of land for sale the market value of lands (in) Cabong, Eastern Samar, is about 1,500 per square meters(sic) sometime in the year 2000, that the land in question is more or less 700 square meters; that since the time of the filing of the instant case she was in possession of the land in question, but from the year 2004, the land is in possession of Mrs. Auticio up to the present; that the document was explained to her as a collateral only; that the period to redeem was within four (4) months only, and in the fourth month and three days she went to petitioner for the purpose of paying the interest but petitioner refused telling her that what is written in the document should be followed.”

Respondent-appellant however did not offer any documentary evidence but submitted a manifestation that the case be submitted for resolution on the basis of her testimony and her witnesses.

On July 21, 2008, the court a quo rendered the assailed decision in favor of petitioner-appellee. The trial court in its disquisition made the following conclusions that:

- 1) The absolute ownership of the land in question can now be consolidated with the petitioner-appellee on the ground that the vendor a retro (respondent-appellant) has failed to repurchase the land within the agreed period.
- 2) The petitioner-appellee is entitled to the possession of the property even during the pendency of the case, for as held in pacto de retro sale jurisprudence, “the title and ownership of the property sold are immediately vested in the vendee a retro, subject to the resolutive condition of repurchase by the vendor a retro within the stipulated period, unless otherwise agreed upon”.
- 3) The contract between respondent-appellant and petitioner-appellees is plain and simple a Deed of Sale with Pacto de Retro as the deed did not contain any averment that would warrant another interpretation thereof.

4) Notwithstanding that the contract is a Deed of Sale with Pacto De Retro, the respondent-appellant, is still allowed under par. 3 Article 1606 of the Civil Code to repurchase the property sold, within thirty(30) days from rendition of final judgment. This is because an honest doubt as to the real intention of the parties in the execution of the deed has been injected to the mind of the court, by the fact that the possession by the vendee a retro (petitioner-appellee) of the land in question started only in the year 2004 (when the case was already pending) and that respondent-appellant was extended another loan of P7,000 on January 2002, with the same property as security.

5) There is no doubt from respondent-appellant's own admissions that she voluntarily agreed to pay an interest of 10% per month for the four(4) month period within which to repurchase the lands sold thus the interest cannot be said to be usurious and should even be paid as part of the price of repurchase.

Aggrieved, respondent-appellant interposes this appeal, with the following Assignment of Errors:

I.

THE LOWER COURT ERRED IN ITS DECISION BY NOT DECLARING THE CONTRACT BETWEEN THE PARTIES AS EQUITABLE MORTGAGE.

II.

THE LOWER COURT ERRED IN ITS DECISION BY DECLARING THAT THE 10% PER MONTH INTEREST IS VALID OR IS NOT EXORBITANT.

Two main issues confront Us in this case, to wit: whether the subject contract is indeed a Deed of Sale with Pacto De Retro and not an equitable mortgage; and whether the monthly interest of 10% per month imposed on the repurchase price is valid.

The lower court arrived at the conclusion that in the absence of an averment to warrant a contrary interpretation, the Deed of Sale with Pacto De Retro is plainly what it has described itself to be; and that the 10% interest is valid, as respondent-appellant admittedly consented or agreed to its imposition, thus binding herself to such agreement.

We agree to both conclusions.

Substantial Law is explicit that a contract is perfected by mere consent.[8] More particularly, a contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[9] This meeting of the minds speaks of the intent of the parties in entering into the contract respecting the subject matter and the consideration thereof. If the words of the contract appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.[10] Even when a document appears on its face to be a sale, 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 of the parties. In such 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 the execution of the contract.[11]

Articles 1602 and 1604 of the Civil Code respectively provide:

"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 lessor 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 vendor binds himself to pay the taxes on the thing sold;
- 5) When the purchaser retains for himself a part of the purchase price;

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."

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

From a reading of the above-quoted provisions, two requisites must be satisfied for the presumption of an equitable mortgage to arise, namely: that the parties entered into a contract denominated as a contract of sale, and that their intention was to secure an existing debt by way of mortgage.[12] Under Art. 1604 of the Civil Code, a contract purporting to be an absolute sale shall be presumed to be an equitable mortgage should any of the conditions in Art. 1602 be present.

In the case at bench however, We find that respondent-appellant has not proffered any proof to show that the requisites of Articles 1602 and 1604 have been met. Other than her bare claims, no convincing proof has been adduced to establish that in the execution of the subject Deed of Sale with Pacto De Retro, respondent-appellant and petitioner-appellee merely intended to embody the former's alleged indebtedness to the latter in a single instrument and secure the same with the subject property. Other than her own testimony, there is no concrete evidence to substantiate 1) the existence of a loan from petitioner-appellee, 2) the condition that property will serve as collateral to the loan and 3) the agreement that such property will be redeemed when the loan is paid. More to the fact that the document is expressly denominated as a "Deed of Sale with Pacto De Retro, there is no stipulation in the deed that suggests the attendance of any of the conditions enumerated in Article 1604. Therefore, there is no sufficient basis to warrant a finding that the deed, albeit captioned as a "Deed of Sale with Pacto De Retro, is in truth and in fact an equitable mortgage.

On the contrary, what is glaring from the records is that the contract executed between respondent-appellant and petitioner-appellee is a plain Deed of Sale with Pacto De Retro. As can be noted from the transcripts,[13] respondent-appellant had full knowledge of this fact, as she, on trial: 1) outrightly identified the executed document as a Deed of Sale under Pacto De Retro; 2) spontaneously admitted that she and petitioner-appellee signed on the document; and 3) categorically answered "No" to the question of whether she was forced by respondent-appellant to sign the document. She even answered in the affirmative when asked if it was of her own volition that she signed the deed and personally facilitated its signing by two witnesses and its notarization. Notwithstanding respondent-appellant's earlier averments in her answer that her intended agreement was one of loan with mortgage of real property; that she only submitted to the dictation of the petitioner-appellee to execute the deed under the pressure of her want for immediate money; and that though the loan was for P12,000 it was made to appear as 16,800.00 in the contract, with the 4,800.00 constituting as interest, her testimony in court reveals that the subject contract is really of "Sale of Real Property with Right to Repurchase"

Citing *Heirs of Tabora Vda. De Macoy vs. Court of Appeals, et. al*, the court *a quo* was therefore correct to declare that:

"It is very clear as sunlight that the document itself as it has described it to be, is a deed of sale with pacto de retro. Otherwise stated the contract is plain and simple a deed of sale with pacto de retro. Further the document itself did not contain any averment that would warrant another interpretation thereof, hence based on that consideration the subject document could not be considered as a loan with mortgage. xxx Inasmuch as the document is plainly a pacto de retro sale, it cannot be considered a loan with mortgage."

As to the second issue of interest on the repurchase price, We likewise find that the court a quo was correct to rule its validity. Respondent-appellant did not in any way raise such issue in her Answer and Counterclaim before the lower court. It was she who declared in court that upon agreement with petitioner-appellee, her alleged loan of P12, 000 earns an interest of 4,800 (or 10% per month) for the 4 month period within which she can repurchase the property sold. She even averred that she had paid the P4,800 interest in the second week of September 2001. Thus it is beyond cavil that she voluntarily assented to such amount of interest.

Article 1306 of the Civil Code explicitly provides that: “the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.” If the stipulations in the contract are valid, the parties are bound to comply with them. The contract is the law between the parties and they are bound to comply with the stipulations therein. [14]

Accordingly, respondent-appellant in this case should be made to pay the 10% interest per month as agreed upon.

WHEREFORE, premises considered, the instant appeal is DENIED and the assailed July 21, 2008 Decision of the Regional Trial Court(RTC), Branch 1, of Borongan City, Eastern Samar in Civil Case No. 3734 is AFFIRMED in toto.

SO ORDERED.

Lagura-Yap, and *Quijano-Padilla, JJ. concur.

* Acting Junior Member per Office Order No.472-13-ABR-dated December 12, 2013.

[1] Rollo, pp. 31-39.

[2] Rollo, pp. 40-58.

[3] Record, pp. 2-5.

[4] The date of execution as can be seen in the Deed is May 11, 2001.

[5] Record, pp. 11-13.

[6] Record, p. 6.

[7] Record, p. 7.

[8] Art. 1315, Civil Code.

[9] Art. 1475, Civil Code.

[10] Art. 1370, Civil Code, second paragraph.

[11] Olea vs. CA. 247 SCRA 274.

[12] Adoracion Lustan vs. Court of Appeals, G.R. No. 111924, January 27, 1997.

[13] TSN, pp. 11-12 (October 10, 2007)

[14] Spouses Florentino T. Mallari and Aurea V. Mallari vs. Prudential Bank, G.R. No. 197861, June 5, 2013.

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