

ELISA KOH, PETITIONER, VS. THE COURT OF APPEALS, ANTONIO KOH AND AZUCENA KOH, RESPONDENTS.

G.R. No. L-29641. November 29, 1973

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

Before this Court is a petition for review of the decision of the Court of Appeals dated August 28, 1968 in CA-G.R. 37367-R affirming the decision of the Court of First Instance of Rizal (Caloocan City Branch) dated November 24, 1965 in civil case C-54 which denied the prayer of the herein petitioner Elisa Koh that she be declared the owner of a parcel of land covered by TCT 2444 of the Registry of Deeds of Caloocan City.

On May 20, 1954 the herein respondent spouses Antonio Koh and Azucena Koh, for the consideration of P17,858, sold to Elisa Koh (a sister of Antonio Koh), under a "Deed of Absolute Sale with Second Mortgage," a parcel of land, together with improve-ments, situated on Tolentino Street, Grace Park, Caloocan, Rizal and covered by TCT 25362 of the Land Registry of Rizal. By virtue of the said deed, the petitioner assumed payment of the balance of the respondents' indebtedness to the Development Bank of the Philippines which was secured by the said real estate. A copy of the purchase agreement was transmitted to the DBP which was subsequently requested to transfer the mortgaged asset to and in the name of the petitioner. The bank, however, denied the request on the ground that the petitioner was in arrears in her amortization payments.

On June 15, 1956, upon payment by the petitioner to the respondents of the balance of the purchase price stipulated in the mentioned deed of sale with second mortgage, the latter executed in favor of the former a "Deed of Cancellation and Release of Second Mortgage."

Subsequently, because of the failure of the petitioner to pay the assumed mortgage obligation to the DBP, the latter fore-closed its mortgage on the asset in question, and, as the highest bidder at the ensuing auction sale, acquired the property on November 25, 1958.

A few days before the expiration of the one-year period for the legal redemption of the property, the DBP issued a receipt in the name of the respondent Antonio Koh for the sum of P1,000 as "Initial Deposit to accompany offer to repurchase former property." Under date of December 8, 1959 another receipt of the same import for P1,065.17 was issued to Antonio Koh by the DBP.

On December 23, 1959 the board of directors of the DBP approved a resolution (Exhibit "O") which reads as follows:

"RESOLUTION NO. 8442. Acceptance of the Offer of the Spouses Antonio Koh and Azucena Macapagal to Repurchase the Property Covered by TCT No. 25362, Land Registry of Rizal. -- A two-story residential building with a lot of 300 sq. m. ... having been acquired by the Bank through foreclosure of mortgage securing a real estate loan of P10,000.00 granted the spouses Antonio Koh and Azucena Macapagal under Board Res. No. 2599, s. 1952, and as the spouses Koh have offered to repurchase the above property, depositing the total amount of P2,065.17 on account of their offer, said offer being in accordance with the policy of the Bank, per

its Board Res. No. 276, series of 1951, the Board, upon recommendation of the Chairman, ACCEPTED the herein offer of the spouses Antonio Koh and Azucena Macapagal to repurchase the above-described property, and reduced the penal clause to one-half (1/2), subject to the following conditions xxx"

On May 31, 1961 the DBP consolidated its title over the property, for which it was issued TCT 76781. Subsequently, the DBP executed a "Deed of Conditional Sale" in favor of the respondent spouses.

On March 6, 1962 the respondent spouses, in consideration of the sum of P4,000, conveyed their rights over the property to Alejandro Z. Barin, Jr. under a "Deed of Assignment and Transfer of Rights." On April 3, 1962 the DBP informed Barin that the assignment to him of the respondents' rights had been approved per its board resolution numbered 2112 dated March 28, 1962.

On February 4, 1963, Barin, for the sum of P300, executed in favor of the respondents a contract of option to purchase the property. On June 3, 1963 the DBP executed in favor of Barin a "Deed of Absolute Sale" of the property in question. On June 4, 1963, Barin, in turn, for the sum of P10,000, executed in favor of the respondent spouses a "Deed of Absolute Sale" of the same property.

In August, 1963 the petitioner filed a complaint against the respondent spouses for the recovery of the property with the Court of First Instance of Rizal (Caloocan City Branch). On November 24, 1965 the trial court rendered judgment, as follows:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the defendants and against the plaintiff, declaring the defendants the absolute owners of the parcel of land together with all its improvements covered by Transfer Certificate of Title No. 2444 of the Registry of Deeds of Caloocan City, and plaintiff is hereby ordered to pay the defendants P4,000.00 as actual and moral damages, P2,000.00 attorney's fees, plus costs."

The Court of Appeals, on appeal, affirmed in toto the judgment a quo in its decision dated August 28, 1968 in CA-G.R. 37367-R.

The two fundamental issues tendered for resolution in the present appeal are: (1) whether the payment made by the respondents to the Development Bank of the Philippines for the repurchase of the property in question should be deemed as having been made in trust for the petitioner's benefit; and (2) whether the trial court erred in awarding actual and moral damages and attorney's fees to the respondents.

- The petitioner argues that under the provisions of section 6 of Act 3135, as amended by Act 4118, only the "debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold" may redeem properties bought at an extra-judicial foreclosure sale within the one-year period of legal redemption; since the respondents are not among those enumerated by the law, their purchase of the property "behind the back and in fraud" of the petitioner must be deemed to have been made in her favor under the law on implied trusts.

This argument is without merit.

It became the duty of the petitioner, as assumptioner of the respondents' mortgage obligation to the DBP, to fully liquidate the same for her benefit and protection. This she failed to do. After the property was purchased by the DBP at the foreclosure sale, the duty likewise devolved upon the petitioner to redeem the same within the prescribed period of time. This duty the petitioner failed to discharge.

The existence of a trust de son tort upon which the petitioner anchors her cause of action may be implied against the respondents only if it can be shown that they had exercised fraud upon the petitioner in buying back the

property. We are, however, not persuaded that fraudulent acts were practised by the respondents against the petitioner. The offer to repurchase made by the respondents to the DBP prior to the expiration of the period of legal redemption did not in law operate to deprive the petitioner of her right of legal redemption. In view, however, of the admitted fact that she allowed her exclusive and primordial right to redeem the property to lapse, the legal effects of the DBP's subsequent acceptance of the respondents' offer to purchase must be considered under a different legal environment.

The contract of sale between the DBP and the respondents became binding between the parties only after the period of redemption prescribed by law had lapsed. When the contract of sale came to exist legally, the DBP already had the right of full disposition of the property in question. Indeed, the deed of sale executed later by the DBP in favor of Barin (in view of the assignment of rights made by the respondents to the latter) was made four years after the petitioner had lost her legal right of redemption.

- With regard to the petitioner's objections to the awards of actual and moral damages in the sum of P4,000 and attorney's fees of P2,000, although we are of the view that her objection has merit with respect to the award of actual and moral damages inasmuch as the complaint below may be regarded as having been filed by her in the reasonable belief that she is entitled to recover title over the property from the respondents and there is no concrete evidence regarding the actual and moral damages suffered by the respondents, nonetheless, considering that a certain measure of pecuniary burden must certainly have been borne by the respondents on account of the case at bar, this Court is of the opinion that moderate damages in the sum of P2,000 are reasonable in the premises.

With respect to attorney's fees, the sum awarded by the court a quo is affirmed.

ACCORDINGLY, with the modification above set forth with respect to damages, the judgment a quo is hereby affirmed. No costs.

Makalintal, C.J., Makasiar, Esguerra, Muñoz Palma, and Aquino, JJ., concur.

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