

ROSARIO VDA. DE BALMORI ET AL., PLAINTIFF AND APPELLEES, VS. CARLOS M. SISON ET AL., DEFENDANTS AND APPELLANTS.

C.A. No. L-761. March 23, 1948

Ponente: BENGZON, J.

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BENGZON, J.:

This appeal involves another pacto de retro document allegedly concealing a real estate mortgage. Many similar disputes have heretofore passed the judicial mill, the issues having become somewhat commonplace. It is a tribute to their patience that judges do not, in utter weariness refuse to discover the concealed pact behind the written document, holding the parties to what they have signed scienti et volenti, and thereby reducing the number of lawsuits.

The record discloses that on March 31, 1941, the following document (Exhibit A) was notarized by Carlos M. Sison and Pilar Balmori on behalf of her father Joaquin Balmori (immaterial parts omitted):

"This agreement, made and executed this 31st day of March, 1941 by and between Carlos M. Sison, of legal age, married to Priscila de la Fuente, and resident of 1298 Pennsylvania, 4 Int., City of Manila, hereinafter to be called the VENDEE, and Pilar Balmori, of age, single, Filipino, and resident of 131 Alhambra, Ermita, Manila, acting in representation of Don Joaquin Balmori by virtue of a general power of attorney executed in her favor by the latter on June 29, 1935 empowering her to sell, lease, and otherwise encumber his real estate properties * * *

"That Don Joaquin Balmori is the absolute owner of two parcels of land with a house of strong materials standing thereon, his title thereto being evidenced by Certificate of Title No. 23920 and Certificate of Title No. 23923 issued by the Register of Deeds of the City of Manila, said lot and house being situated in Calle Alhambra No. 131, Ermita, Manila, and bounded and described as follows:

" * * * * * "

"That for and in consideration of the sum of eight thousand pesos (P18,000) the receipt of which is hereby acknowledged, by the VENDOR in her above-mentioned capacity, the said VENDOR hereby sell, cedes and transfers the properties herein described, included the house of strong materials located thereon, to the said VENDEE, his heirs, administrators, executors and subject to the conditions herein below set forth:

"(1) That the VENDOR reserves the right to repurchase from the VENDEE the property herein described within a period of five years from the time this contract is consummated by paying to the said VENDEE the purchase price stated herein.

"(2) That pending the repurchase by the VENDOR, the said VENDOR, with her immediate family, shall have the right to lease from the VENDEE the property herein described by paying a monthly rent of one hundred fifty pesos (P150.00) payable at the law office of the VENDEE located at 340 Regina Building within the first twenty-five days of the month that it falls due; provided, further, that in the event that the VENDOR shall sublet the place to anybody else, the written consent of the VENDEE shall first be secured;

"(3) That the VENDOR shall have the right to accumulate the maximum of four months rent; provided, however, that the VENDEE shall also have the right to refuse the payment of the current rent if the back rent or rents, including the current rent, is not paid.

"(4) That the VENDOR shall insure in the name of the VENDEE who shall have the right to collect the amount for which the house is insured in the event of fire, the house located in the properties herein described against fire in the sum of fifteen thousand pesos (P15,000.00), the annual premium to be delivered to the VENDEE, who shall be responsible for its payment to the Insurance Company five days before the expiration of the contract of insurance.

"(5) That the vendor shall pay any and all taxes that may be levied on the property herein described by delivering the amount or amounts to the VENDEE, who shall be responsible for its payments to the Government, five days before the said taxes shall become due and payable.

"(6) That the VENDOR shall keep the property herein described in good condition and all expenses for repairs, repainting or improvements for the house located thereon shall be at expense of the VENDOR; and that the VENDOR shall be liable to the VENDEE for any damages that the property herein described shall sustain because of the negligence of the lessee.

"(7) That any violation on the part of the VENDOR of any of the above-mentioned conditions or failure on the part of said VENDOR to pay five months consecutive rent shall forfeit her right to repurchase the property herein described and the VENDEE shall become the absolute owner thereof."

It is undisputed that on the above-mentioned day Pilar Balmori received from Carlos M. Sison the sum of P18,000.

Thereafter the Balmori family continued occupying the house until June 30, 1942 when Sison recovered possession thereof by virtue of a complaint he had filed in the Municipal Court of Manila for nonpayment of the stipulated rents from November, 1941 to June 3, 1942.

On December 2, 1942, Carlos M. Sison consolidated his title to the property on the ground of the vendor's breach of the terms of the lease i. e. failure to pay rents for five months. He obtained from the Register of Deeds new certificates of title.

Subsequently, in March, 1943, the Balmoris, through Rosario Vda. de Balmori, moved to repurchase the property, offering Carlos K. Sison the sum of P26,500. (Joaquin Balmori had died in December, 1941). He declined, however, saying they had forfeited their right to repurchase through their failure to pay rents for more than seven months.

Wherefore, on April 14, 1943, the plaintiffs, the only legal heirs of Joaquin Balmori (his widow and children) instituted these proceedings in the Manila court to obtain relief, advancing the theory that their transaction with Sison was a loan of money secured by realty, and not a sale with the right to repurchase.

Meanwhile, on April 8, 1943, Carlos M. Sison sold the property to his brother Juan A. Sison for the sum of P27,000.00 by means of a document that was immediately recorded in the Registry of Deeds. Branding this as a fictitious conveyance plaintiffs included Juan A. Sison as defendant for the corresponding remedies against him.

After hearing the parties and their evidence, the trial court rendered judgment holding that their contract was a mere mortgage and "declaring the defendant Carlos M. Sison creditor of plaintiff's predecessor, in the sum of P20,000, with 10 per cent interest per annum; ordering Carlos M. Sison to accept from the plaintiffs the sum of P20,000, plus the corresponding interests, in payment of this indebtedness; declaring the deed of sale between Carlos M. Sison and Juan A. Sison (Exhibit 6) null and void; and ordering the Register of Deeds to cancel

Transfer Certificates of Title issued in the name of Juan A. Sison by virtue of said exhibit 6 and to issue other ones in favor of the heirs of Joaquin Balmori".

This main issue has been thoroughly discussed in the briefs of both sides. The nature of the agreement is mostly a question of fact. The plaintiffs' story is that "sometime prior to March 31, 1941, Joaquin Balmori,* * * who was then very ill, was in need of money, but as he could not go out of his bed to make the necessary negotiations, he executed a power of attorney in favor of his daughter, Pilar Balmori, authorizing the latter to negotiate a loan using the above-mentioned property as security. Pilar Balmori, acting upon the information given by her brother-in-law, Pelagio Villegas, approached Carlos M. Sison and solicited from him a loan of P20,000 to be guaranteed by the above-mentioned property. Carlos M. Sison, after inspecting the proposed security with his brother, Juan A. Sison, an engineer, agreed to extend a loan of P18,000, to be increased later to P20,000 payable within five years from said date, with interest thereon at the rate of 10 per cent per annum, payable at the rate of P150 a month. In addition, however, he required the borrower to pay a supposed commission to him of 4 per cent in connection with the grant of the loan. Evidently, he intended to give this amount to his brother Juan as compensation for the latter's above technical services. On March 31, 1941 Carlos asked Pilar to sign the corresponding document. Pilar immediately noticed that the document was in the form of a 'pacto de retro' sale. Carlos, however, assured her that it would be, in essence, the same as a mortgage and that she need have no fear whatever of losing the property in the event they should fail to pay the proposed rent for five consecutive months, because he (Carlos) would not take advantage of such a default. In view of these assurances, and considering that they were then hard pressed for money, Pilar signed the document identified in the records as exhibit A. Thereupon, Carlos advanced the loan after deducting P100 as attorney's fees to himself and P720 as commission to himself of which the sum of P700, according to Carlos, was given to his brother Juan, as above-mentioned.

"On July 21, 1941, Carlos M. Sison extended the additional loan of P2,000 to Joaquin Balmori, still represented by Pilar Balmori, but Carlos M. Sison caused to be prepared and executed Exhibit 2, which purports to be a mortgage in favor of Juan A. Sison of Joaquin Balmori's right to repurchase the above properties. This latter loan was payable within five years, at 10 per cent per annum, payable monthly. On the same date, July 21, 1941, the sum of P450 was paid to Carlos in full payment of the so-called rent on exhibit A for the months of May, June and July at the rate of P150 per month (exhibit 3). Again, on December 25, 1941, there was paid to Carlos the sum of P499.98 allegedly 'in full payment of the rent of the property in question corresponding to August, September and October, 1941' at the rate of P166.66 per month (exhibit 1). The difference of P16.66 in the monthly rental represented the 'interest' on the additional loan of P2,000."

On the other hand, Carlos M. Sison, the defendant, swore that "several days before March 31, 1941, my brother approached me and proposed that I invest some money on the Balmori property. He told me of the advantages of the investment, it is on the boulevard, of strong materials, well located. The Balmoris wanted a mortgage on the property, but I told him I do not want to enter into a mortgage contract for it involved a lot of things, foreclosure, the 90-day period, computation of interest. I told him I would give P18,000 provided we enter into a Pacto de Retro sale and in order not to have their father vacate the premises, he is so sick, I am going to make him a tenant at P150.00 a month All these facts were made very clear to Pilar Balmori, that she was entering into a contract of pacto de retro sale and as a matter of fact this contract, Exhibit A, was copied from a decision of the Supreme Court which states that it is a pacto de retro sale. And I told them that although a contract of pacto de retro sale is quite different from a mortgage, I am going to give them a lee-way of five months before starting ejecting them and they all consented".

Without explaining why he doubted the personal credibility of defendant Carlos M. Sison, whose version tallies with the words and phrases of the document evidencing the transaction, the trial judge opined that the parties had

concluded a loan, because of "their conduct and the negotiations that took place prior to March 31, 1941" and because (1) the vendor remained in possession of the property sold paying rents of P150.00 a month which is exactly 10 per cent of P18,000 and (2) because the document "contains provisions such as the payment of land taxes, insurance premiums and costs of repairs by the vendor-lessee".

By "conduct of the parties" the court obviously alluded to, and believed, the plaintiffs' testimony that Joaquin Balmori had authorized his daughter Pilar to borrow money, that she approached Sison for a loan and that he agreed to the request provided the transaction be evidenced by a deed of the tenor of Exhibit A. Yet it clearly appears that Pilar was authorized by her father not only to borrow on that property, but also to sell it. (See the power of attorney).

And contrary to the court's opinion, the circumstance that the vendor retained possession as lessee is perfectly compatible with a true pacto de retro sale^[1]. So are the stipulations about payment by the lessee or vendor of land taxes, insurance, premiums, etc.^[2] And the clause establishing forfeiture of the right of redemption is valid. (*Vitug vs. Coronel*, 40 Phil. 686. See also *El Hogar Filipino vs. Paredes*, 45 Phil. 178.)

On the other hand, Carlos M. Sison had no motive to camouflage a mortgage with the habiliments of a pacto de retro. There was no usury, as the trial court found. Even supposing that in addition to the rents (10%) the "borrower" paid 4 per cent as commission or interest, inasmuch as the "loan" was for five years the 4 per cent commission would hardly make a one per cent addition to the yearly interest (10%). Eleven per cent per annum is not usurious.

Wherefore, it is quite unlikely that Sison should plan a concealment. It is very probable that, as he asserted under oath, he eschewed a mortgage, for the troublesome foreclosure proceedings. He wanted a sale, reserving to the Balmoris the privilege to repurchase. This arrangement must have been acceptable to the Balmoris. It gave both parties what they ultimately desired. To the Balmoris, P18,000 which they could "return" by repurchasing their property within five years. To Sison, the property itself, if the Balmoris failed to repurchase it. No foreclosure difficulties. Extremely remarkable is the absence of any evidence that the property's value was much greater. Striving to overcome the tenor of the instrument, plaintiffs should have established that point, to show the unlikelihood that the Balmoris would have consented to a sale with pacto de retro. Indeed, there is indirect proof that the assessed value was P17,222. (Exhibit 11).

Proof positive that there was actually a sale is the fact that when in 1942 Sison sought to recover possession of the premises by a court proceedings, and when he consolidated his title thereto not a single voice was raised to claim that the contract was a mortgage.

It was only in 1943, when realty prices in Manila began to rise, that plaintiffs thought of repurchasing the property, and failing in the attempt, they suddenly remembered the rights of a mortgage. Those who have unadvisedly sold lands that subsequently increased in value know the frequent and powerful temptations to exaggerate or minimize details supporting any theory that would enable them to reclaim their former possessions, specially recalling our doctrines that oral evidence may be introduced, under certain circumstances, to alter or contradict the terms of a written instrument, and that contracts of pacto de retro being disfavored, documents of such nature will not be upheld as sales, but as loans, when there is something in their language or in the conduct of the parties which clearly shows that they intended a mortgage — not a sale. Certainly, there is no purpose to discard those views now.

However, the document here in question is plain. There is nothing in its language to engender the suspicion that it meant other things. It is exactly the form of instrument which was declared a pacto de retro sale in *Tolentino vs. Sy Chiam*, supra. Indeed, Carlos M. Sison, a lawyer by profession, swore before the court that Exhibit A was

modelled after the contract in that case.

And what about the conduct of the parties? Except for what Pilar Balmori declared, no act of the plaintiffs before this litigation had in any way given indication of a contract of mortgage. On the contrary, their silent acquiescence in the ouster, and in the consolidation of ownership, is corroborative of that transfer of dominion differentiating a mortgage from a sale. And the subsequent act of Pilar Balmori in mortgaging their right of redemption to Juan A. Sison is added indication that there was a veritable sale with pacto de retro. True, it is reported that this mortgage was a part of the original scheme of Carlos M. Sison to disguise the mortgage. But this is improbable, because seven months had lapsed between the original pacto de retro sale and the subsequent mortgage, and it is inconceivable that Pilar Balmori could again be "forced" to sign a document that misrepresented the agreement, relieved as her family was, of the pressing financial necessity that compelled her in the first instance to acquiesce in Exhibit A.

To cap it all, the herein plaintiffs about March, 1943 attempted to buy back the property, offering Carlos M. Sison the sum of P26,500. A slip that gave plaintiffs away, this is conclusive admission that Carlos M. Sison had become the owner, through the pacto de retro sale and his consolidation of title. This distinctive, persuasive feature is not to be found in the cases brought to our attention holding pacto de retro documents as mere mortgages.

In *Gatmaitan vs. Nepomuceno*, 42 Phil. 295, we reversed the trial judge's finding that a pacto de retro document executed by Nicolas Espinosa was a mortgage. This conclusion was prompted by the clear provisions of the power of attorney given to Espinosa empowering him to sell, plus the stipulations in the document which were plainly those of a pacto de retro sale. This Court found error in the acceptance of the "self-serving declaration" of one of plaintiffs that they had understood the transaction to be a mortgage. In that case we made these pronouncements:

"We are not unmindful of the fact that sales with pacto de retro are not favored, and that the court will not construe an instrument to be one of sale con pacto de retro, with the stringent and onerous effects which follow unless the terms of the document and the surrounding circumstances require it. (*Padilla vs. Linsangan*, 19 Phil., 65, 68; *Olino vs. Medina*, 13 Phil., 379.) In consonance with this doctrine, we, have also decided that 'parol evidence is competent and admissible in support of allegations that an instrument in writing, purporting on its face to transfer the absolute title to property, or to transfer the title with a mere right of repurchase, was in truth and in fact given merely as security for the repayment of a loan.¹ (*Cuyugan vs. Santos*, 34 Phil., 100; *Rodriguez vs. Pamintuan and De Jesus*, 37 Phil., 876; *Cuyugan vs. Santos*, 39 Phil., 970.)

"In the present case, however, the terms of the contract entered into between the parties clearly show that the transfer of the land in question by the plaintiffs to the defendant was in the nature of a sale with pacto de retro, and the plaintiffs have shown no circumstances whatever which would justify us in construing the said contract to be a mere loan with guaranty.

"In every case in which we have construed a contract to be a mortgage or a loan with guaranty instead of a sale with pacto de retro, we have done so either because the terms of such contract are ambiguous (i. e., capable of being interpreted either as a loan with guaranty or a sale with pacto de retro), or because the circumstances surrounding the execution or the performance of the contract were incompatible or inconsistent with the theory that said contract was one of purchase and sale. (See *Olino vs. Medina*, 13 Phil., 379.) In the case of *Padilla vs. Linsangan* (19 Phil., 65, 66), the term employed in the contract to indicate the nature of the conveyance of land was 'pledged' instead of 'sold'. In the case of *Manlangit vs. Sanchez Dy Puico* (34 Phil., 325), while the obligor used the terms 'sell and transfer with a right to repurchase', yet in said contract he described himself as a 'debtor', the obligee as a 'creditor', and the contract as a 'mortgage'. In the case of *Rodriguez vs. Pamintuan and De Jesus* (37 Phil., 876), the person who executed the instrument purporting on its face to be a deed of sale of

certain parcels of land, had merely acted under a power of attorney from the owner of said land, 'authorizing him to borrow money in such amount and upon such terms and conditions as he might deem proper, and to secure payment of the loan by a mortgage' on said lands. In the case of *Villa vs. Santiago* (38 Phil., 157, 161), although a contract purporting to be a deed of sale was executed, the supposed vendor remained in possession of the land and invested the money he had obtained from the supposed vendee in making improvements thereon; the value of the land was more than P10,000, whereas the money borrowed was only P2,300; and there were other circumstances connected with the conduct of the plaintiff (the supposed vendee) which justified the court in holding that the transaction was a mere loan. In the case of *Cuyugan vs. Santos* (34 Phil., 100), the purchaser accepted partial payments from the vendor, and such acceptance of partial payments 'is absolutely incompatible with, the idea of irrevocability of the title of ownership of the purchaser at the expiration of the term stipulated in the original contract for the exercise of the right of repurchase'."

Pilar Balmori, we are told, knew at the time she signed Exhibit A that it was a pacto de retro sale, entirely different from a mortgage. We may gather that at that time, or subsequently thereto, the certificates of title were delivered to Carlos M. Sison. (Otherwise he could not have obtained new certificates of title). It is therefore quite probable that a pacto de retro sale was really intended (cf. *Arevalo vs. Dimayuga*, 49 Phil. 894 at p. 900).

Wherefore, fully persuaded that Sison and Balmori had really agreed to a sale with pacto de retro, we deem it unnecessary to pass on the validity of the conveyance to Juan A. Sison and the other incidental issues in the controversy. The defense that defendants were excused from the violation of the contract of lease because of the Japanese occupation, is precluded by the final judgment revoking the lease in 1942 and restoring possession to Carlos M. Sison.

The defendants are absolved from the complaint, with costs against the appellees.

Feria, Pablo, and Padilla, JJ., concur.

[1] Deeds of sale containing such provisions were declared contracts of pacto de retro in *Lichauco vs. Berenguer*, 20 Phil. 12; *Vitug vs. Coronel*, 40 Phil. 686; *Laxamana vs. Carlos*, 57 Phil. 722; *Alderete vs. Amandoron*, 46 Phil. 488; *Villarosa vs. Villamor*, 53 Phil. 350.

[2] Similar stipulations were found in the contract, which in *Tolentino vs. Sy Chiam*, 50 Phil. 558, was held a pacto de retro.

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