

CONCEPCION NADAL, CONSUELO NAINGUE, ROGELIA NAINGUE, ALEJANDRA NAINGUE, AMADO NAINGUE, BELEN NAINGUE AND RODRIGO NAINGUE, PETITIONERS, VS. THE HON. COURT OF APPEALS AND SALVADOR...

G.R. No. L-46623. March 04, 1994

Ponente: VITUG, J.

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VITUG, J.:

This petition for review on certiorari questions the Resolution, dated 08 July 1977, of the Court of Appeals, which has reversed and set aside its own Decision of 29 November 1976, by ordering the dismissal of a complaint for the recovery of possession and ownership of a parcel of land and declaring private respondent Salvador Ureta to be the true and lawful owner thereof. The land in question is a 50,861-square meter lot situated in Pangitan, Madalag, Capiz.

Concepcion Nadal, one of the petitioners, and her sister Benigna were co-owners of the land in question, 29,874 square meters of which, assessed at P520 under Tax Declaration No. 1876, was declared in the name of Concepcion, while the remaining 20,987 square meters, assessed at P410.00 under Tax Declaration No. 1900, stood in the name of Benigna. In 1930, in consideration of the amount of P99.00 and fifteen (15) cavans of palay, the two sisters mortgaged the land and transferred its possession to spouses Cosme Nadua and Simona Nabayra.

The mortgage was later assigned to herein private respondent Salvador Ureta who also took over the possession of the land. No document evidenced the transfer. Sometime in 1940, Ureta brought Concepcion and Benigna to Notary Public Julio Perez before whom the sisters executed, three days apart, separate documents, duly notarized, entitled “Escritura De Compra-Venta con Pacto de Retro,” in favor of Ureta. The document executed by Concepcion was for a consideration of P140.00, and that of Benigna for the amount of P135.00. Except for the amounts and the names of the sisters, both documents read, as follows:

“Que en consideracion a la suma de CIENTO CUARENTA (P140.00) pesos que ha recibido a mi entera satisfaccion del Sr. Salvador Ureta, de 40 años de edad, casado con Asuncion Nabor, residente y con direccion postal en el municipio de Libacao, Capiz, Filipinas, vendo, cedo y traspaso con pacto de retro al mencionado Sr. Salvador Ureta, sus herederos y causahabientes, la parcela de terreno arriba descrito, libre de toda carga y gravamen y que puede ejercitar su derecho de traspasarla a otros. Tambien queda pactado y convenido con el mencionado Sr. Salvador Ureta; que si yo la devolviera dentro de tres años, contados desde esta fecha, la suma de CIENTO CUARENTA (P140.00) pesos, y le abonare ademas todos los gastos de la presente escritura, me otorgaran el comprador o sus representantes escritura de retroventa; pero si trascurre dicho plazo sin haberse utilizado el derecho de redencion, adquiriera la presente el caracter de absoluta e irrevocablemente consumada, y en el entretanto solo el comprador podra disponer de la finca con las limitaciones prescritas en la ley Hipotecaria.”[1]

The documents were registered with the Register of Deeds of Roxas City sixteen years later or on 09 February 1956.

At one time, the Nadal sisters informed Ureta of their intention to redeem the property. Asuncion Nabor, Ureta's wife, told them, however, that "they (spouses Ureta) have not yet found any land in which they could transfer their money." Again, in March 1943, also well within the three-year period to redeem the property, the Nadal sisters called on Ureta at his house in Barrio Pangitan. Heeding the request of Ureta that important persons in the community must witness the redemption of the property, the Nadal sisters thus invited Federico Ricamonte, Vice-Mayor of Madalag; Elpidio Malanga, Chief of Police of Madalag; the Municipal Treasurer of Libacao; Elias Nadua, barrio lieutenant of Pangitan, and Rogelia Naingue (one of the petitioners herein), to accompany the sisters in visiting anew the Uretas. Ureta informed the group that he would agree to have the land redeemed but he should also be paid for the improvements that he had theretofore introduced on the property. They were advised by Ureta to come back after lunch so that he could be afforded enough time to prepare an accounting of the improvements. When the group returned, the redemption cash was tendered. While the money was being counted, Ureta stood up and said, "Wait, your money might be bogus," and Ureta refused to accept the same.

The Nadal sisters went to Filomeno Diapo, then Justice of the Peace of Banga and Malinao, Aklan, so that he could intercede for and in their behalf. Ureta reiterated his stand that he did not oppose the redemption provided that he could get paid for the improvements on the land in the amount of P3,000.00. According to Judge Diapo, the Nadal sisters were not able to pay the amount demanded on the date agreed upon.

Meantime, Benigna died. Her heirs pursued the demand on Ureta to allow the redemption but their efforts were still to no avail. Finally, on 18 September 1956, the heirs of Benigna named Consuelo, Rogelia, Amado, Belen and Rodrigo, all surnamed Naingue, together with their aunt, Concepcion Nadal, filed with the then Court of First Instance of Aklan a complaint for recovery of possession and ownership of the land (Civil Case No. 777). Upon her demise, Concepcion was substituted in the case by her heirs, namely, Apolinario, Uldarico and Eutiquio, all surnamed Nillasca. After trial on the merits, the court a quo^[2] rendered, on 26 October 1970, a decision in favor of the plaintiffs (herein petitioners), thus –

"WHEREFORE,

"(1) the contracts of pacto de retro executed by the Nadal sisters (Exhs. '1' and '2') are hereby declared NULL AND VOID on the ground of fraud, misrepresentation and deceit;

"(2) the defendant Salvador Ureta shall pay the plaintiffs the sum of P7,125.00 to which they are entitled as owners with right to possession of the land, as the possession of the defendant Salvador Ureta was in bad faith from the year 1943 when he refused repeatedly the redemption after repeated demands; and

"(3) henceforth to render an accounting of the products of the land to the plaintiffs during the years he will continue in possession with (sic) the month of December.

"The counterclaim is hereby DISMISSED and the defendant is ordered to pay the costs.

"SO ORDERED."^[3]

Ureta appealed to the Court of Appeals. On 29 November 1976, the appellate court rendered a decision,^[4] upholding, with modification, the decision of the lower court. Its decretal portion read:

"In the light of the foregoing considerations, the judgment appealed should be affirmed, subject to the following modifications:

"(1) Declaring the true contract between the parties to be one of mortgage, the properties in question being used only to secure the loan of appellees from the appellant; and

"(2) Ordering appellant to pay appellees the sum of Seven Thousand and Seventy-six Pesos (P7,076)

representing the value of the net income of the properties in question to which appellees are entitled as owners, after deducting the value of the improvements introduced by appellant thereon while in possession of said properties and appellees' indebtedness to the appellant, thereby discharging the mortgage and compensating appellant's claim for improvements.

"WHEREFORE, as thus modified, the decision appealed from is hereby affirmed in all other respects, with costs against the appellant.

SO ORDERED."[5]

Ureta filed a motion for reconsideration. On 08 July 1977, the appellate court, on a 3-2 vote,[6] reversed and set aside its decision and declared Ureta to be the true and lawful owner of the land in question.[7]

Hence, the instant petition for review on certiorari.

Petitioners argue that while the questioned contracts are notarized, there are antecedent, contemporaneous and subsequent acts of the parties clearly proving that the real intention of the parties under said documents has always been one of a mere mortgage of the property. They ask us to consider the following:

Firstly, since the year 1930, the property was mortgaged to spouses Cosme Nadua and Simona Nadayra with right of possession. The Nadal sisters agreed to the transfer of the mortgage to private respondent only because of his close relationship with them.

Secondly, the land continued to be declared in the names of the Nadal sisters up to 1953, long after the alleged sale with pacto de retro in favor of private respondent was executed. In fact, the two sisters and, later, their heirs religiously paid the taxes on the land until 1966 even while the case was already pending before the court a quo.

Thirdly, the sisters and then their heirs so repeatedly made demands upon private respondent, as aforesaid, for the redemption of the property.

Fourthly, the respective considerations for the questioned contracts were grossly inadequate, compared to the actual value of the properties, to be so taken otherwise than as mere mortgages.

Petitioners finally explain that private respondent has been in possession of the property because the Nadal sisters understood each agreement to be one of "mortgage in possession" which is a common practice in the province.[8]

Private respondent, on the other hand, maintains, in main, that the issues raised are basically factual which are beyond the competence of this Court to evaluate. Nevertheless, he asserts, anyone who claims a document of sale con pacto de retro to embody, instead, a mere mortgage has the burden of proving his claim by clear, convincing and satisfactory evidence, which, he stresses, petitioners have miserably failed to do. The documents, being public instruments, executed and acknowledged with all the formalities of law, their explicit tenor, they aver, cannot be overcome by petitioners' mere testimonial evidence.[9]

The petition is impressed with merit.

We have long conceded that the authority of this Court in cases brought before it from the Court of Appeals is confined to reviewing errors of law, and that factual findings of the appellate court should normally be conclusive upon us. The rule, we must also reiterate, is not absolute. Equally settled is that, where the factual findings of the Court of Appeals are contradictory to those of the trial court, this Court should not hesitate, whenever it deems it to be warranted, from pursuing its own review on the basis of the records before it.[10] In this case, we also note that while the Court of Appeals has initially sustained the factual findings of the trial court, it later has reversed itself only, however, by a split vote.

The need for reviewing the facts, given this particular case, is clearly justified, if not, in fact, mandated. Art. 1370 of the Civil Code (Art. 1281 of the old Code) expresses that while the literal meaning of the stipulations of a contract should control when its terms are clear, if, upon the other hand, “the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.”[11] Art. 1371 of the same Code (Art. 1282 of the old Code) provides that “(i)n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.” Thus, in *Javier v. Court of Appeals*,[12] we said:

“x x x It is settled that the previous and simultaneous and subsequent acts of the parties are properly cognizable indicia of their true intention. Where the parties to a contract have given it a practical construction by their conduct as by acts in partial performance, such construction may be considered by the court in construing the contract, determining its meaning and ascertaining the mutual intention of the parties at the time of contracting. The parties’ practical construction of their contract has been characterized as a clue or index to, or as evidence of, their intention or meaning and as an important, significant, convincing, persuasive, or influential factor in determining the proper construction of the agreement.”

Here, it never was disputed that prior to the transfer of the mortgage to herein private respondent, the property was merely mortgaged to spouses Cosme Nadua and Simona Nabayra who, by the terms of the agreement, enjoyed the possession of the property. The mortgage right was thereafter assigned to private respondent. There was no effort to document that transaction until much later when the Nadal sisters were prevailed upon by private respondent, who was a teacher, a former town mayor and councilor, to sign the “Escritura De Compra-Venta con Pacto de Retro.” The identical documents were written in Spanish. While the documents were said to have been “read” to them by the notary public in the Visayan dialect, the only dialect they knew, it would not, however, be reasonable to also at once conclude that the two (2) sisters, who admittedly were illiterate and who merely had affixed their thumbmarks thereon, truly and fully comprehended the legal import of the documents.

That the Nadal sisters signed the Escritura believing it to be a mere mortgage, similar to the understanding they had with the Nadua spouses, is bolstered, indeed, by the following factual findings of the Court of Appeals in its 29 November 1976 decision, concurring, in most respects, with that of the trial court, viz:

“(1) The Nadal sisters and, after their death, their heirs made repeated attempts to redeem the property in accordance with the consideration involved in the loan originally obtained from the Naduas for which subject property was mortgaged as security, which mortgage was later transferred to Ureta; that is, P99 and 15 cavans of palay as agreed with the Naduas, instead of the considerations of P140 and P135 stated in Exhibits 1 and 2, the deeds of pacto de retro sale, respectively.

“(2) The Nadal sisters and/or their heirs continued paying the taxes for the lands from 1948 to 1966 (Exh. G-1 to G-5, C-1 to C-8), whereas the earliest tax payment made by Ureta was only in 1954 (Exh. 11), when ownership was supposed to have been consolidated in him since 1944 after the expiration of the 3-year redemption period fixed in Exhibits 1 and 2. If the sisters had really sold the lands, they and their heirs would not have kept paying taxes therefor as late as 1966.

“(3) The lands continued to be declared in the names of the deceased sisters up to and beginning 1952 (Exhs. E and A-3), whereas said lands were declared by Ureta in his name only in 1943 (Exh. 8).

“(4) Although Exhibits 1 and 2 were executed in May 1940, the same were registered with the Register of Deeds by Ureta only on February 9, 1956, or after a period of 16 years. A fairly intelligent person, being at one time or another a teacher, mayor, and councilor, Ureta would not have waited so long to register said instruments for the protection of his ‘ownership’ rights with the attendant risks that any undue delay might entail if the transaction were really a sale as said exhibits purported to be.”[13]

It was unfortunate, in our view, that the foregoing findings were later to be discarded and practically given of no value by the appellate court.

This incident is not the first time when public documents, although presumed valid and genuine, are held to be subordinate to convincing evidence shown to the contrary.[14] In contracts, the real intent of the parties has always remained to be primordial.[15]

The fact that private respondent has been in possession of the property is not all that consequential on the true import of the parties' agreement. A "mortgage in possession," otherwise termed an "antichresis,"[16] was a practice prevailing even at that time. It entailed the lawful acquisition by the mortgagee of the possession, actually or constructively, of the premises mortgaged, with the creditor standing upon his rights merely as mortgagee, not as owner, for the purpose of enforcing his security upon such property and allowing its income to pay for the debt.[17] In such agreement, the mortgagee would be obligated to account for the fruits received from the mortgaged property deductible from the total amount due the mortgagee from the mortgagor,[18] including, in this particular case, the value of the improvements introduced by the mortgagee in possession over which the herein petitioners expressed willingness to likewise reimburse.

WHEREFORE, the Court of Appeals' Resolution, dated 08 July 1977, is hereby REVERSED and SET ASIDE and its Decision of 29 November 1976 is REINSTATED and AFFIRMED, with the MODIFICATION that private respondent shall render an accounting of the fruits of the property from the time of the filing of the complaint below, from which fruits shall be deducted the value of the improvements introduced by private respondent. Private respondent shall thereupon deliver the value of the fruits of the property to petitioners less the amount of their indebtedness.

This decision is immediately executory.

SO ORDERED.

Feliciano, (Chairman), Bidin, and Romero, JJ., concur.

Melo, J., no part.

[1] Rollo, p. 15.

[2] Presided by Judge Felix V. Macalalag.

[3] Record on Appeal, pp. 32-33; Rollo, p. 119.

[4] Penned by Associate Justice Mariano Serrano and concurred in by Associate Justices Ramon G. Gaviola, Jr. and Lorenzo Relova.

[5] Decision in CA-G.R. No. 49620-R, p. 33; Rollo, p. 45.

[6] The Resolution was penned by Associate Justice Ramon G. Gaviola, Jr. and concurred in by Associate Justices Samuel F. Reyes and Vicente M. Santiago, Jr. Justice Mariano Serrano, the ponente of the November 29, 1976 decision, reiterated his original stand and Justice Lorenzo Relova concurred with him.

[7] Rollo, pp. 92-117.

[8] Rollo, pp. 170-172.

[9] Rollo, pp. 186-189.

[10] De los Santos v. Reyes, 205 SCRA 437.

[11] Alim v. Court of Appeals, 200 SCRA 450.

[12] 183 SCRA 171, 179.

[13] CA Decision, pp. 24-25; Rollo, pp. 36-37.

[14] De Jesus v. Court of Appeals, 217 SCRA 307.

[15] Labasan v. Lacuesta, 86 SCRA 16.

[16] The Civil Code provides:

“Art. 2132. By the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.

“Art. 2133. The actual market value of the fruits at the time of the application thereof to the interest and principal shall be the measure of such application.

“Art. 2134. The amount of the principal and of the interest shall be specified in writing; otherwise, the contract of antichresis shall be void.

“Art. 2135. The creditor, unless there is a stipulation to the contrary, is obliged to pay the taxes and charges upon the estate.

“He is also bound to bear the expenses necessary for its preservation and repair.

“The sums spent for the purposes stated in this article shall be deducted from the fruits.

“Art. 2136. The debtor cannot reacquire the enjoyment of the immovable without first having totally paid what he owes the creditor.

“But the latter, in order to exempt himself from the obligations imposed upon him by the preceding article, may always compel the debtor to enter again upon the enjoyment of the property, except when there is a stipulation to the contrary.

“Art. 2137. The creditor does not acquire the ownership of the real estate for non-payment of the debt within the period agreed upon.

“Every stipulation to the contrary shall be void. But the creditor may petition the court for the payment of the debt, or the sale of the real property. In this case, Rules of Court on the foreclosure of mortgages shall apply.”

[17] Diaz and Rubillos v. De Mendezona, 48 Phil. 666, 669.

[18] Diego v. Fernando, 109 Phil. 143, 148.

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