

JULIA ANG ENG MARIANO, PETITIONER, VS. THE COURT OF APPEALS, JUANITO FAUSTINO AND TERESITA FAUSTINO, RESPONDENTS.

G.R. No. 103038. March 31, 1993

Ponente: NOCON, J.

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NOCON, J.:

Petitioner, Julia Ang Eng Mariano, claims that the appellate court erred in declaring the Deed of Sale dated September 29, 1987 executed in her favor by the private respondents, the spouses Faustino, as null and void and TCT No. 156493 in her name cancelled. Emphasizing that the trial court's findings of fact carry more weight on appeal than those of public respondent, petitioner asks Us to reverse the questioned decision[1] and resolution[2]. Private respondents claim, however, that they were tricked by petitioner into signing over their property to her. A question arises: Is parol evidence admissible to resolve the controversy between the parties? Yes, it is admissible.

Petitioner claims that the private respondents approached her on October 28, 1986 for a loan of P250,000.00 on the security of a mortgage on their lot with an area of 2,035 square meters located at Deparo, Kalookan City and covered by TCT No. 129613 in their names. On January 15, 1987, they secured another loan of P250,000.00 on the basis of the same security. Forseeing their inability to pay this when they become due, private respondents sold the same parcel of land mortgaged to petitioner for an additional P320,550.00 on September 29, 1987. Thus, a deed of sale was drawn up on said date and a new TCT No. 156493 issued in petitioner's name.. However, the private respondents refused to turn over possession of the land to her and instead sued her for annulment of deed of sale and damages.

On the other hand, private respondents' story is that all they wanted was to transform their small piece of land, which they had inherited from their parents, into a subdivision. They looked for financiers who would be able to lend them money for their project and petitioner expressed her desire to help them.

Being unschooled farmers, and relying completely on the trust and confidence they have on petitioner, they signed the prepared mortgage forms that petitioner told them to sign. They first mortgaged their land on October 28, 1986 for P250,000.00 with the condition that they were to construct a house on said lot so that they would be able to secure another P250,000.00 with the house and lot as security. They received, however, only P150,000.00 for the first mortgage. After the house was constructed, they were made to sign another document for another P250,000.00 on January 15, 1987 for which they received again only P150,000.00. Thereafter, petitioner told them that she could easily secure a bank loan of P1,000,000.00 for their project but they had to sign over their property to her as the bank would require that the property be in her name for the loan to be processed. Thus, trusting her completely, they signed on September 29, 1987 a prepared deed of sale which petitioner handed over to them for their signature. When they discovered that there was no loan and that they were being asked to vacate their land, they took petitioner to court.

Private respondents sued petitioner for annulment of the deed of sale and the cancellation of the Transfer

Certificate of Title in her name. The trial court, however, dismissed their complaint relying on the validity of the deed of sale as the best evidence of the transaction between the parties.

On appeal, the appellate court saw otherwise and ruled as follows:

"WHEREFORE, the appealed decision is reversed and set aside. The deed of sale dated September 29, 1987 is declared null and void and TCT No. 156493 in the name of Julia Ang Eng Mariano is cancelled. The Register of Deeds is ordered to issue a new one in lieu thereof in the name of Juanito Faustino, married to Teresita R. Faustino. Further, the appellee is ordered to pay attorney's fees of P10,000.00.[3]"

Petitioner now comes to Us raising as errors of the appellate court the following:

"I

"X X X IN ANNULING THE QUESTIONED DEED CONSIDERING THAT THERE IS NEED FOR A MORE CONVINCING PROOF, GREATER THAN PREPONDERANCE OF EVIDENCE TO ANNUL AND SET ASIDE THE EFFICACY OF THE DULY EXECUTED AND ATTESTED PUBLIC DOCUMENTS; and

"II

"X X X IN ARRIVING AT FACTUAL CONCLUSIONS BASED ON FALLACIOUS PREMISES WHICH ARE NOT BORNE BY THE RECORDS OF THE CASE."[4]

"I

Behind this flowery legalese is the simple question adverted to at the start of this decision: can parol evidence be admitted to show that the Deed of Sale, which petitioner claims truly represented the contract between the parties and "drawn up with all the solemnities prescribed by law"[5] and properly notarized, a sham transaction as claimed by the private respondents?

A similar question cropped up in *Pagsuyuin vs. Intermediate Appellate Court*[6] where this Court ruled as follows:

"The rule on parol evidence recognizes the following exceptions:

(a) where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;

(b) xxxx xxx (Sec. 7, Rule 130).

As can be clearly gleaned from the foregoing, the rule making a writing the exclusive evidence of the agreement therein stated, is not applicable when the validity of such agreement is the fact in dispute. A contract may be annulled where the consent of one of the contracting parties was procured by mistake, fraud, intimidation, violence or undue influence (Art. 1330, New Civil Code). In fact, as early as 1919 in the case of *Bough v. Cantiveros*, 40 Phil. 209, this Court laid down the rule that where the validity of the agreement is the issue, parol evidence may be introduced to establish illegality or fraud.

x x x x x x x x

"While the writing itself may have been accompanied by the most solemn formalities, no instrument is so sacred when tainted with fraud as to place it beyond the scrutiny of extrinsic evidence. This evidence overcomes the known presumption *fraus est odiosa et non praesumenda* (*Yturalde v. Vagilidad*, 28 SCRA 393 [1969])."[7]

In the case at bar, petitioner relies heavily[8] on the notarial certification of the Deed of Absolute Sale by Notary Public Alfonso B. Capacillo on September 24, 1987 that said document was executed by the parties named therein in the presence of witnesses Juanito Chan and Gaspar Dandan.[9]

On the other hand, private respondents' evidence clearly shows that all they wanted was to contact a financier[10] who would lend them money to finance the transformation of their inherited agricultural land[11] in Deparo, Caloocan City into a subdivision. In the meantime they had already spent P6,000.00[12] for the subdivision survey.[13] A certain person approached them and told them that a certain Julia Ang could help them in the development of their subdivision.[14] After private respondent Juanito Faustino was introduced to Julia Ang, the latter promised him that he will be given a loan of P250,000.00 to start the development of his subdivision.[15] After the private respondents signed the mortgage document for P250,000.00, petitioner gave them only P150,000.00 saying that the balance covered interest and other expenses.[16] Private respondents, however, had to construct a house on the property as required by petitioner to be able to get additional loans for the development of their subdivision.[17] Thereafter, an additional mortgage document was prepared for P250,000.00 but, as before they were only given P150,000.00.[18]

When pressed for the P1,000,000.00 loan that petitioner promised them for the development of their proposed subdivision, petitioner allegedly told private respondents that the bank required that the title to their house and lot be transferred to her name as she is known to the bank as a businesswoman of repute with capital which the bank could run after in case the mortgage loan would not be paid.[19] The private respondents, therefore, signed the Deed of Sale over their property in favor of petitioner.[20]

Private respondents' version was, in fact, corroborated by petitioner when she testified on cross-examination that the real intention of the parties in the execution of the deed of sale was to secure a loan of P1,000,000.00 on the property in her name and that whatever private respondents owed her would be deducted from the proceeds of the loan with the private respondents assuming the payment thereof.[21] Her own words make out a case of fraud which she practised upon the private respondents.

Moreover, petitioner could have easily rebutted and belied private respondents' negative averment[22] in the trial court. All she had to do was to present the Notary Public who notarized the Deed of Sale and the two witnesses to the deed. Upon their word that private respondents had signed the deed of sale in their presence and had received the consideration of P320,550.00,[23] private respondents would have had to kiss their cause of action goodbye.

No such testimony was given by the petitioner in the trial court and her corroborating testimony cited in the footnote shows why -- there is no such loan, the deed of sale was a scheme to get the property from private respondents.

II

The first mortgage document was executed on October 28, 1986[24] while the second was executed on January 15, 1987.[25] On both deeds the following provision, common to both, is written, to wit:

"It is of the essence of this contract that if the mortgagor fails to pay the principal obligation within One Year (1), then this mortgage shall be foreclosed and the abovementioned property shall be sold in accordance with law; but if the Mortgagor pays said obligation together with the interest, then this mortgage shall become null and void and of no effect."

On the other hand, the Deed of Sale dated September 29, 1987 simply stated, as follows:

x x x

'That for and in consideration of the sum of THREE HUNDRED TWENTY FIVE THOUSAND FIVE HUNDRED FIFTY PESOS (P325,550.00), Philippine Currency, receipt of which is hereby acknowledged and confessed by the VENDOR from the VENDEE, the VENDOR does hereby by these presents SELL, CEDE, TRANSFER and CONVEY in a manner absolute and irrevocable, the property above-described together with all the improvements built thereon, unto the said VENDEE, his heirs, assigns and successors.

'That the VENDOR hereby warrant(s) his title over the property above-described, with full power and authority to dispose of the same, free from all liens and encumbrances, and that henceforth, full ownership and possession shall pertain to the VENDEE.

In the light of the fact that petitioner is admittedly a businesswoman of repute, managing a profitable business, the following questions come to mind:

1. Why were the encumbrances of October 28, 1986 and January 15, 1987 not mentioned in the deed of sale as pre-existing encumbrances, although said encumbrances, by way of mortgages, may have been made in petitioner's favor?
2. Should not the prior mortgage amounts of P500,000.00 have been included together with the additional cash price of P320,550.00 to make a total consideration of P820,550.00 with the added explanation that by the execution of the deed of sale said P500,000.00 would have been considered fully paid, as was petitioner's contention?

Considering these unanswered questions in relation to the deed of sale and mortgage proviso above quoted, We find that the appellate court's ratiocination -- on why this deed of sale is, in reality, a sham transaction -- more in accord with business common sense and ordinary experience of mankind, which We quote with approval:

"Were reliance to be placed exclusively on the deed of sale, there is no doubt that appellants' protests would have to be rejected. However, in cases such as this one where the parties are seriously at odds on the nature of the transaction between them, the circumstances, before and after, must be scrutinized.

"1. Appellee has stated below -

'x x defendant testified that previous to the sale, the lot in question was twice mortgaged to her to secure two loans of P250,000.00 each both maturing within one (1) year. When their aggregate obligation of P500,000.00 matured, plaintiffs could not pay the same. They thus decided to sell the land to defendant for an additional amount of P320,550.00.' (Memorandum, p. 4, Record, p. 86).

The argument is repeated, almost verbatim, in the brief (at p. 16).

"The fallacy of the argument is readily apparent. The first of the two mortgages was executed on October 28, 1986, the second, on January 15, 1987. The deed of sale was executed on September 29, 1987. Both mortgage accounts therefore were not yet due on the date of the deed of sale, consequently the motivation for the sale stated by the appellee is not true.

"2. Appellee says in her brief -

'The consideration of P320,550.00 stated in the deed of sale is more consistent with the claim of the appellee that it is in addition to the previous loans of appellants in the aggregate amount of P500,000.00' (at pp. 13-14)

In the course of her testimony however, the appellee said the only consideration for the deed of sale was the P320,550.00 'because the P500,000.00 is considered as a mortgage.' (tsn, January 4, 1990, p. 7)

"3. Appellee herself revealed the true nature of the deed of sale when she said, on cross-examination, that the intention was merely to secure a loan of P1M on the property, on her credit as a businesswoman and that

whatever the appellants owed her would be deducted from the proceeds, to be paid to her, the appellants to assume the P1M mortgage (*ibid.*, pp. 10-11). Additionally, as stated earlier, the P1M mortgage loan never materialized.

"Finally, having ostensibly acquired full ownership of the land on September 29, 1987, appellee has not taken any step to get possession, although the appellants stay on the premises. As a matter of fact, her answer dated November 22, 1988 did not even interpose any counterclaim on possession.

"These circumstances taken together lead to the conclusion espoused by the appellants, that the deed of sale is a sham transaction, not representing the true intent of the parties and that no consideration passed or was received. x x x.

WHEREFORE, finding no reversible error in the decision appealed from the petition is hereby **DISMISSED** for lack of merit. This is without prejudice to whatever action the petitioner may take on the actual amount loaned to private respondents. We **AFFIRM** the questioned public respondent's decision and resolution in toto. Costs against the petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] "Faustino vs. Mariano," CA-G.R. CV No. 25535, May 15, 1991, Camilon, J., ponente, Magsino and Luna, JJ., concurring; Rollo, pp. 43-47.

[2] *Ibid.*, November 25, 1991, Camilon J., ponente, Magsino and Luna, JJ., concurring; Rollo, p. 48.

[3] Rollo, pp. 45-47.

[4] Rollo, p. 138.

[5] Petitioner's Memorandum, p. 6; Rollo, p. 139.

[6] 193 SCRA 547.

[7] *Ibid.*, at pp. 552-554.

[8] TSN, January 4, 1990, p. 4, petitioner Julia Ang Eng Mariano on direct examination.

[9] Exhibit "3", Original Records, pp. 26-27.

[10] TSN, February 27, 1989, p. 5, private respondent Juanito Faustino on direct examination.

[11] TSN, February 27, 1989, p. 20, private respondent Juanito Faustino on cross examination.

[12] Comment, p. 5; Rollo, p. 59.

[13] TSN, February 27, 1989, p. 14; private respondent Juanito Faustino on direct examination.

[14] *Ibid.*, p. 5; private respondent Juanito Faustino on direct examination.

[15] *Ibid.*, pp. 5-6; private respondent Juanito Faustino on direct examination.

[16] TSN, February 27, 1989, p. 23; private respondent Juanito Faustino on cross examination.

[17] TSN, January 4, 1990, p. 8; petitioner Julia Ang Eng Mariano on cross-examination.

[18] Op. cit.

[19] TSN, February 27, 1989, p. 25; private respondent Juanito Faustino on cross-examination.

[20] Ibid.

[21] "Q Is it not a fact that after the second mortgage, you were trying to collect interest from the Faustinos and they could not pay the interest that is why you convinced them to make a loan for which you told them you will help them in getting that loan?

"A Yes, sir. At that time the economy of our country is down so I was unable to secure a loan from the bank.

"Q In your desire to help them in getting a loan, you showed them your capacity as a businesswoman so that you can immediately get a loan for them for P1 Million Pesos, you showed them your business name, your auditor's certificate and your trucking business?

"A Yes, sir.

"Q But you were not able to get that loan?

"A Yes, sir.

"Q Now, your understanding then was that when you will be able to get that loan, whatever is owed by them to you will be deducted from that loan and they will assume the mortgage?

"A Yes, sir."

(TSN, January 4, 1990, pp. 10-11; petitioner Julia Ang Eng Mariano under cross-examination; Italics supplied)

[22] "x x x when a negative is averred in pleading, or plaintiff's case depends upon the establishment of a negative and the means of proving the fact are equally within the control of each party, then the burden of proof is upon the party averring the negative; but when the opposite party must, from the nature of the case, himself be in possession of full and plenary proof to disprove the negative proof, then it is manifestly just and reasonable that the party which is in possession of the proof should be required to adduce it; or, upon his failure to do so, we must presume it does not exist which of itself established a negative. x x x" (United States vs. Denver & Rio Grande Railroad Company, 191 U.S. 84; 48 L. Ed 106, at US 91, 92; L. Ed. 109; italics supplied)

[23] Almendra vs. IAC, 204 SCRA 142, cited by petitioner in her Memorandum on page 9 (Rollo, p. 142) is very applicable in the case at bar, to wit:

"While petitioners' contention is basically correct, we agree with the appellate court that there is no valid, legal and convincing reason for nullifying the questioned deeds of sale. Petitioner had not presented any strong, complete and conclusive proof to override the evidentiary value of the duly notarized deeds of sale. Moreover, the testimony of the lawyer who notarized the deeds of sale that he saw not only Aleja signing and affixing her thumbmark on the questioned deeds but also Angeles and Aleja counting money between them, deserves more credence than the self-serving allegations of the petitioners. Such testimony is admissible as evidence without further proof of the due execution of the deeds in question and is conclusive as to the truthfulness of their contents in the absence of clear and convincing evidence to the contrary." (At p. 148; italics supplied)

[24] Rollo, pp. 36-37.

[25] Ibid., pp. 38-39.

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