

LUZ ARDENAL SALAME AND RAMON A. SALAME, PETITIONERS, VS. COURT OF APPEALS AND SPOUSES ATILA BALGOS AND TEODORICA ASIS, RESPONDENTS.

G.R. No. 104373. December 22, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari of the Decision,[1] of the Court of Appeals affirming the decision of the Regional Trial Court, Roxas City, Branch 19, which dismissed the amended complaint of plaintiff for reconveyance and damages and the counterclaim of defendants for lack of merit.

The following are the facts:

Petitioners are the heirs and successors-in-interest of their mother, Vicenta Acevedo (Vicenta) who died in 1968. Vicenta and private respondents, the spouses Atila Balgos and Teodorica Asis, were the registered owners pro-indiviso of a parcel of agricultural land located in Barrio Banica, Roxas City. One-half of the said property belonged to Vicenta and the other half to the private respondents.

On November 10, 1962, Vicenta executed a "Contract of Sale of Undivided Share by Installment with Right of Repurchase" in favor of respondent spouses on her one-half share, in consideration of the amount of P5,300.00 with a stipulation on the seller's right to repurchase said property within eight years, and with an automatic grace period of another two years from the expiration of the eight-year period.

On December 24, 1964, Vicenta executed a "Deed of Absolute Sale" whereby she sold her 1/2 share for P9,000 to private respondents.

On January 1, 1967, the respondent spouses executed a "Promise to Sell" whereby they promised to sell the 1/2 portion to Vicenta within the years 1973 to 1974, ending on December 31, 1974.

Vicenta died on January 20, 1968. In December 1974, petitioners asked to be allowed to repurchase the property for the amount of P9,000.00, but private respondents refused on the ground that they were now the legal and absolute owners of the said property.

Petitioners then filed a complaint with the Regional Trial Court of Roxas City for "Reconveyance and Damages" against private respondents.

In its Decision,[2] the trial court dismissed petitioner's complaint and defendant's counterclaim for lack of merit.

Petitioners appealed the case to the Court of Appeals which affirmed the trial court's decision in toto.

Hence, this petition.

Petitioners contend that the three transactions between Vicenta and respondent spouses were, in reality, a single transaction starting with the Contract of Sale by Installment with Right to Repurchase [marked Exh. "A" during

the trial], continuing with the Deed of Absolute Sale [Exh. "B"] and ending with the Promise to Sell [Exhibit "C"]. Since the transactions involved the same property and the same parties, petitioners claim that pursuant to Article 1604[3] in relation to Article 1602[4] of the Civil Code, it may be presumed to be an equitable mortgage because the real intention of the parties is to secure the payment of a debt obtained by Vicenta from private respondents. Furthermore, the said transaction has all the earmarks of an equitable mortgage, namely:

1. the price of the sale is inadequate;
2. after the expiration of the period to exercise the right of repurchase under Exh. "A," another document, Exh. "C" extending the period of redemption or granting a new period was executed, and
3. private respondents retained a part of the purchase price.

We find petitioners contentions to be unmeritorious. All the three documents presented are separate and independent from each other although they refer to a common property. Having been duly acknowledged before a notary public the same have in their favor the presumption of regularity. To contradict the same, there must be evidence that is clear, convincing and more than merely preponderant.[5] However, the records in this case do not show even a preponderance of evidence in favor of petitioners claim that Exhibits "A," "B," and "C" all constituted a single transaction. We have had occasion to state:

A notarial document is evidence of the facts in clear unequivocal manner therein expressed.[6]

No evidence is presented by petitioners to prove their contention that it was the parties' intention to enter into an equitable mortgage agreement, other than the documents themselves.

Furthermore, under the Parol Evidence Rule,[7] the three documents in question must be taken as containing all the terms of the agreement between Vicenta and respondent spouses, there appearing to be no ambiguity in the language of the said documents nor any failure to express the true intent and agreement of the said parties.

We find the terms and conditions of all three documents clear, free from any ambiguity, and expressive of the real intent and agreement of the parties.

In Exh. "A," Vicenta sold, for P5,300.00, her one-half share reserving for herself and her successors-in-interest the right to repurchase the same within eight years, extendible for another two. This conditional sale was converted into an absolute sale under the terms of Exh. "B," whereby Vicenta sold, for P9,000.00, her one-half share "free from any liens or encumbrances" or without any stipulation regarding a right to repurchase on the vendor's part.

Under the terms of Exh. "C," private respondents promised to sell the said one-half share to Vicenta and her successors-in-interest within the years 1973-1974, ending on December 31, 1974, after which upon failure to purchase the property, the promise to sell would cease to have any effect.

When Exh. "B" was executed, the right of repurchase given to Vicenta was terminated and her successors-in-interest could no longer exercise the same after her death in 1968.

Clearly, the "Promise to Sell" was a separate transaction, distinct from the right of repurchase under Exh. "A."

Moreover, we find that it was a unilateral promise to sell governed by Article 1479[8] of the Civil Code which requires that, in order that such a promise may be binding upon the promisor, (1) it be for a price certain and (2) it must be supported by a consideration separate from the price.

The record shows that Exh. "C" was unilaterally executed, signed and delivered by the promisors, herein private respondents, without the participation of Vicenta and her heirs. Exh. "C" does not indicate the selling price of the

property; nor does it show that the unilateral promise to sell is supported by a consideration distinct and separate from that of the price.

In *Falcon v. Orobia*,^[9] we stated that:

Where, as in this case, defendants offered to buy the land but did not mention in their offer the price therefor, an "Option to Re-Sell" in their favor, requiring that the price must be determined when the resale is made, cannot be enforced, there being failure to agree on the price.

Also, in *Sanchez v. Rigos*^[10] we explained that:

In order that said unilateral promise may be "binding" upon the promisor, Article 1479 requires the concurrence of a condition, namely, that the promise be supported by a consideration distinct from the price. Accordingly, the promisee cannot compel the promisor to comply with the promise unless, the former establishes the existence of said distinct consideration. In other words, the promisee has the burden of proving such consideration.

Exh. "C," failing to satisfy the requirements for a valid unilateral promise to sell, petitioners may not now enforce the same.

WHEREFORE, the instant petition is hereby DENIED, and the Decision of the Court of Appeals is hereby AFFIRMED in toto.

Bidin, (Acting Chairman), Melo, and Vitug, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, p. 36.

[2] Rollo, p. 52.

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

[4] Art. 1602. 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 lessee 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 purchaser retains for himself a part of the purchase price;

(5)

When the vendor binds himself to pay the taxes on the thing sold;

(6)

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.

In any of the foregoing cases, any money, fruits, or other benefits to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

[5] Yturalde v. Azurin, L-22158, May 30, 1969.

[6] Cabrera v. Villanueva, L-75069, April 15, 1988.

[7] Rule 130, Sec. 7, Rules of Court which states that:

"Sec. 7. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

(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) When there is an intrinsic ambiguity in the writing. The term "agreement" includes wills."

[8] "Article 1479, Civil Code; "A promise to buy and sell a determinate thing for a price certain is reciprocally demandable."

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price," (1451a).

[9] 22 SCRA 1392 (1968).

[10] 45 SCRA 368 (1978).

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