

FELIMON UY, PETITIONER, VS. THE COURT OF APPEALS AND MARIA DEL ROSARIO-TANJUAKIO, RESPONDENTS.

G.R. No. 104784. March 03, 1994

Ponente: NOCON, J.

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NOCON, J.:

Petitioner assails the appellate court's decision declaring his loan to private respondent as an equitable mortgage.[1] Emphatically declaring that what private respondent signed was a deed of absolute sale over her house and lot, petitioner asks us to reverse. Private respondent, on the other hand, states that the real intention of the parties was that her house and lot would only be mortgaged to petitioner as shown by an "Option To Repurchase." Since the decisions of the trial court and the appellate court are worlds apart, the Court has decided to scrutinize the evidence thoroughly.

The facts of the case as summed up by the trial court and adopted by the appellate court are as follows:

"As summed by the trial court:

‘This case is for reconveyance of a house and lot with TCT No. 214580 - Quezon City, then in the name of plaintiff (herein private respondent Maria del Rosario-Tanjuakio) but which was cancelled by virtue of a Deed of Absolute Sale dated June 11, 1979, executed by plaintiff for a consideration of P70,000.00 in favor of defendant (herein petitioner Felimon Uy) who was issued his TCT No. 28338 on November 18, 1981. Brought to fore is the said Deed of Absolute Sale.

‘Pursuant to the pre-trial Order of August 5, 1983, the issue of whether the said Deed of Absolute Sale may be declared as an equitable mortgage was agreed by the parties to be submitted for decision on the basis of the facts stipulated and reflected in the said pre-trial order, to wit:

‘By virtue of a Deed of Sale, dated June 11, 1979, executed by plaintiffs in favor of defendants, the latter caused the cancellation of the former's T.C.T. No. 214580, Quezon City, and a new TCT No. 283384 - Q.C., was issued to said defendants on November 18, 1981. By virtue also of a letter, dated June 11, 1979, said defendants granted plaintiffs 60 days from said date an option to purchase the subject land covered by the aforesaid titles. It appears that plaintiffs have failed to exercise that said option.

‘Culled from the foregoing is the singular issue of whether the aforesaid Deeds of Sale may be declared as an equitable mortgage. This being a legal issue, the same may be resolved without further reception of evidence and for this purpose, parties are given 15 days from receipt hereof to submit their memoranda after which the case shall be deemed submitted for decision.’

‘Both parties submitted their respective memoranda and accordingly, a decision was rendered on October 18, 1983, ‘finding no justification to consider the subject Deed of Absolute Sale an equitable mortgage, the complaint is hereby DISMISSED.’

'Plaintiff went on appeal and in a decision dated February 27, 1987, in CA-G.R. CV No. 05001, the Honorable Court of Appeals set aside the aforesaid decision and remanded the instant case for trial on the merits before this Court. Defendant elevated that decision of the Court of Appeals by way of petition for review on certiorari. In a Resolution, dated December 2, 1987 in G.R. No. 78532, the Honorable Supreme Court denied said petition.

'Accordingly, the records were remanded to this Court for trial on the merits. The records of the instant case were, however, among those burned in the conflagration of the Quezon City Hall on June 11, 1988. It was only on September 27, 1988 that the records of the case was officially declared reconstituted.

'Pre-trial briefs were then submitted by the parties, with proffer (sic) of their documentary exhibits on the same issue as defined in the aforequoted pre-trial order of August 5, 1983: Whether the Deed of Absolute Sale between plaintiff vendor and defendant as vendee may be declared as an equitable mortgage.'

"After trial the court a quo rendered judgment as stated at the outset, the decretal portion of which reads:

'WHEREFORE, premises above considered, finding no merit in plaintiff's claim that the Deed of Absolute Sale was an equitable mortgage, the instant complaint is hereby DISMISSED.

'Further, plaintiff is hereby ordered to pay P10,000.00 for attorney's fee of defendant and costs of suit.

'SO ORDERED.'

"Not satisfied, plaintiff elevated her cause once again to this Tribunal."[2]

The second time around with the appellate court, petitioner received a decision which, in its dispositive portion, stated as follows:

"PREMISES CONSIDERED, the decision of the trial court is hereby SET ASIDE and in lieu thereof another rendered declaring the deed of absolute sale between the parties an equitable mortgage. Plaintiff is declared entitled to redeem the mortgaged property which shall be effected upon the payment of plaintiffs mortgage debt to defendants in the total amount of P70,000.00 with legal rate of interest from the time the deed in question was executed on June 11, 1979 until it is fully paid."[3]

Hence, this petition where petitioner faults the appellate court with the following errors:

1. A finding that the Deed of Absolute Sale did not express the true intention of the parties;
2. A finding that the sale price of P70,000.00 for the house and lot in 1979 was inadequate;
3. A finding that the private respondent was still in possession of the house and lot which was the subject matter of the case;
4. A finding that the private respondent had paid all the real estate taxes;
5. The doctrine of "doubt to be settled in favor of the greatest reciprocity of interest" for onerous contracts was misapplied.

Petitioner claims that:

"Private respondent's own witness testified that he explained to her that the document she was signing is a deed of absolute sale. Nevertheless, private respondent signed the said deed voluntarily. Private respondent is a college graduate. She is presumed to know the contents of the deed of absolute sale, especially so when her own witness explained to her the contents thereof (tsn., pp. 24-25, Hearing on July 25, 1969). The deed of absolute sale is so simply worded. There is absolutely no room to impute unto the document that the same didn't express the true intention of the parties. x x x."[4]

In answer, the private respondent states that:

"Suffice it to say that Respondent Court of Appeals appreciated the facts that Petitioner controlled the preparation of the deed of sale and option to repurchase; and that Private Respondent was a borrower out of necessity; and that the context of Morales' testimony is that the contract that should have been prepared by Petitioner and signed by Private Respondent is that of a mortgage and not sale." [5]

The following testimony on cross-examination of private respondent's witness, Mr. Jesus Morales, was used by the trial court in declaring that private respondent's own witness negated her claim that her transaction with petitioner was one of mortgage:

"Q: You impress to the Hon. Court that there were discussions prior to the signing of the document?

A: There was sir, I even asked the plaintiff why is it that the document is a deed of sale whereas she is mortgaging her property." [6]

which same testimony was seized upon by petitioner and reiterated in his memorandum [7] with the following cross-examination testimony of said Mr. Morales added:

"Q - But in your personal observation Mr. Witness, you get the impression that plaintiff got clearly your message that actually she is signing the document deed of sale?

A - Perhaps, sir, because I explained to her that what she is signing is a deed of sale.

Q - That is extending your friendly reminder to her that what actually she is signing is a deed of sale and she signed the document in your presence?

A - Yes.' (tsn., pp. 24-25, July 25, 1989 hearing)." [8]

The Court notes that the following cross-examination testimony [9] of petitioner Uy does indicate that there could exist doubts about the authenticity of petitioner's Deed of Absolute Sale:

"CROSS EXAMINATION BY ATTY. GINETE (of petitioner F. Uy)

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"Q - You also testified Mr. witness and confirm the testimony of Mr. Morales explaining to the witness the import of the Deed of Sale she signed, is it not also a fact that per testimony of Mr. Morales you replied that the signing of the absolute sale was only for formality sake when in fact the transaction was only a mortgage, do you confirm that testimony of Mr. Morales?

A - I was not here when Mr. Morales testified.

Q - And in the testimony of Mr. Morales Mr. Morales informed the plaintiff that what she was signing is a deed of absolute sale but the plaintiff replied that the document she is signing is only for formality sake and you did not make any comment, what do you say to that?

A - Mr. Morales kept pointing to the plaintiff that the document she is signing was a deed of absolute sale." [10]

When counsel for private respondent tried to have petitioner confirm that private respondent's witness, Mr. Jesus Morales, testified that petitioner stated that the signing of the deed of sale was only a formality, he evaded answering the same by saying that: "I was not here when Mr. Morales testified."

However, petitioner FORGOT his defense strategy when he wanted to emphasize the fact that private respondent signed a document entitled deed of absolute sale in response to private respondent's counsel's question as to what

he had to say about Morales' testimony that he (Morales) told private respondent that what she was signing was a deed of absolute sale. Petitioner answered: "Mr. Morales kept pointing to the plaintiff that the document she is signing was a deed of absolute sale."

Now, how could petitioner answer that way if he were indeed not present when Mr. Morales testified? It should be noted that the question petitioner answered started with: "And in the testimony of Mr. Morales x x x."

Necessarily, the cross-examination testimony of Mr. Morales must be studied to provide any clue as to the real nature of the transaction between private respondent and petitioner. The significant cross-examination testimony of Mr. Morales is the following:

"Q: And you wish to picture to the Court that on that occasion the person nearest you were Mr. and Mrs. Uy and your wife?

A: Yes.

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Q: After the signing of the deed of absolute sale, the defendants delivered to her a document which you identified as Exh. C the right to repurchase?

A: Yes.

Q: And you were present when this Exh. C was delivered by Atty. and Mrs. Uy to the plaintiff?

A: Yes.

Q: You made the impression that she was aware that she was to redeem the property as stated in the document within 60 days?

A: Yes.

Q: Did you also talk to the plaintiff about her capability to redeem the property within the 60 days period stated in Exh. C?

A: I also reminded the plaintiff about this 60 day period and she informed me that they have an agreement with the Uys that provided she will be able to pay the interest, the property will not be foreclosed.

Q: She told that to you notwithstanding the fact according to your explanation to her the significance of the document that what she is signing is a deed of absolute sale?

A: Yes."[11]

(NOTE: "Sic" not used to avoid cluttering up the testimony)

Mr. Morales' cross-examination testimony is very clear that although private respondent signed a deed of absolute sale over her house and lot in favor of the petitioner, she did so because she was granted the right to repurchase the same. And she could still redeem the same even after the 60-day period granted as long as she would pay the corresponding interest.

Of course, Mr. Morales' testimony would have been pure hearsay were it not for the fact that, although petitioner's counsel tried to get private respondent to say something else during her cross-examination, she said the very same thing. Private respondent's cross-examination testimony is as follows:

"Q: You made a statement to the effect that although you were given 60 days from June 11 to repurchase the property... you made a statement to the effect that as long as you can pay 5% or the equivalent of P3,500.00

you would be allowed to redeem the property, do you confirm or deny that?

A: Because that was what Nena told me.

Q: And you agreed to that?

A: Yes, I believed her."[12]

It is clear that private respondent intended to mortgage her property to the Uys to borrow P70,000.00, incidentally, to pay Morales P50,000.00[13] which she owed him. She was, however, made to sign a deed of absolute sale with a right to repurchase the same granted in a separate document. The appellate court, therefore, did not abuse its discretion in holding that the deed of absolute sale was in reality an equitable mortgage.

As correctly held by the appellate court:

"Under Article 1604 of the Civil Code a contract purporting to be an absolute sale shall be presumed to be an equitable mortgage should any of the conditions in Article 1602 be present. Otherwise stated, the presence of only one circumstance defined in Article 1602 is sufficient for a contract of sale with right to repurchase to be presumed an equitable mortgage. The said article expressly provides therefor 'in any of the following cases', hence, the existence of any of the circumstances enumerated therein, not a concurrence nor an overwhelming number of such circumstances suffices to give rise to the presumption that the contract with right to repurchase is an equitable mortgage.[14]

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"Several circumstances x x x persuade this Court to construe the questioned documents as an equitable mortgage.

"First, while concededly plaintiff may have been aware of the contents of the Deed of Absolute Sale, the preponderance of the evidence shows however that she signed knowing that the said contract did not express the real intention of the contracting parties. She was, in fact, led to believe by the defendants whom she approached for a loan to pay her obligation to Jesus Morales that it was the policy of defendants in lending money to execute such a Deed of Absolute Sale over the mortgaged property before extending the loan, and that the turning over of the title to the property to the defendants was a mere formality. If plaintiff signed notwithstanding all these, it is more probable to believe that she did so because she was in urgent need of funds for, verily, 'Necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them'.

"Second, the amount of P70,000.00, even in 1979, is too inadequate for a purchase price of plaintiffs property consisting of a house and lot measuring four hundred twenty (420) square meters together with all the other improvements made therein located at Novaliches, Quezon City. In *Quinga vs. Court of Appeals, et al.*, although the contract between the parties upon its face was one of sale, the Supreme Court, nevertheless, upheld the findings of this Court that the transaction was not a sale but a loan secured by an equitable mortgage under the prevailing circumstances of the case, such as, that the price of the land was grossly inadequate and the vendor remained in possession thereof and enjoyed the fruits. Article 1602 of the Civil Code, in fact, expressly provides that in case of doubt a contract purporting to be a sale with a right to repurchase shall be construed as an equitable mortgage when the price or consideration of the sale is unusually inadequate.

"Third, although symbolically the possession of the property was transferred to defendant, it was plaintiff who continued to be in physical possession of the property. The second paragraph of Article 1602 of the Civil Code provides that when the vendor remains in possession as lessee or otherwise, the contract shall be construed as an equitable mortgage.

"Fourth, the supposed vendor had been paying the realty taxes thereon even after the execution of the

document in 1979. It was only in 1982 that the alleged vendees-spouses started paying the same. In *Santos vs. Duata*, in affirming a decision of this Court, the Supreme Court considered the facts that the vendor remained in possession of the land and continued paying the taxes thereon significant circumstances which justified a judgment holding the transaction between the parties as an equitable mortgage and not a pacto de retrosale thereby applying Article 1602 of the Civil Code.

"Finally, there is the rule that in case of any doubt concerning the surrounding circumstances in the execution of the contract, the least transmission of rights and interests shall prevail if the contract is gratuitous, and, if onerous, the doubt is to be settled in favor of the greatest reciprocity of interest. Thus, in the old case of *Olino vs. Medina*, Olino filed a complaint against Medina to recover a parcel of riceland which he alleged to have mortgaged for P175.00 and which Medina refused to return on the ground that the latter allegedly bought the property. In deciding the conflict of allegations between the parties, the Supreme Court through Justice Florentino Torres considered the transaction over the property as a loan reasoning that 'such a contract involves a smaller transmission of rights and interests, and the debtor does not surrender all rights to his property but simply confers upon the creditor the right to collect what is owing from the value of the thing given as security, there existing between the parties a greater reciprocity of rights and obligations.'"[15]

The other assigned errors need not be discussed as these are inconsequential after our holding that what transpired between private respondent and petitioner was an equitable mortgage and not a deed of absolute sale.

WHEREFORE, the petition is hereby DENIED for lack of merit. The assailed appellate court's decision is hereby AFFIRMED in toto. Costs against the petitioner.

SO ORDERED.

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

[1] CA-GR No. 26190, promulgated November 29, 1991, ponente, Imperial, J.; concurring, Javellana and Guingona, JJ.

[2] Rollo, pp. 22-24.

[3] Rollo, p. 28.

[4] Rollo, p. 10.

[5] Rollo, p. 59.

[6] TSN, July 25, 1989, p. 23.

[7] At p. 4.

[8] Rollo, p. 86.

[9] "[D]ue attention must be given to the cross-examination. It is the province of the latter to test the credibility of witnesses, expose falsehood or half-truth, uncover the truth which rehearsed direct-examination testimonies may successfully suppress, and demonstrate inconsistencies on substantial matters which create reasonable doubt x x x" (*People v. Pido*, 200 SCRA 45, 55).

[10] TSN, September 7, 1989, p. 27.

[11] TSN, July 25, 1989, pp. 19, 25-27.

[12] TSN, May 25, 1989, p. 22.

[13] *Ibid.*, p. 5.

[14] CA Decision, p. 7; p. 28.

[15] CA Decision, pp. 5-7; Rollo, pp. 26-28.

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