

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. MACAPANTON ABBAS, JUDGE OF THE COURT OF FIRST INSTANCE OF SULU, 16TH JUDICIAL DISTRICT AND DATU MOHAMMAD DANIAL, RESPONDENTS.

G. R. No. 10573. April 29, 1957

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for certiorari to set aside the order of respondent Judge Macapanton Abbas of the Court of First Instance of Sulu, in Criminal Case No. 1155 for violation of the Usury Law, against Datu Mohammad Danial, issued on March 28, 1956, in the course of the trial of said case, sustaining the objection of the defense to the introduction by the prosecution of parol evidence to show that the document entitled "Deed of Sale of Real Property with Right to Repurchase" was really a contract of loan secured by a mortgage, tainted with usury.

The amended information filed by the fiscal in said criminal case reads as follows;

"That on or about September 15, 1952, in the Municipality of Jolo, Province of Sulu, Philippines, and within the jurisdiction, of this Honorable Court, the above-named accused made a loan of P3,000 to the spouses Asaali Gani and Indah Atung Gani, which was to be secured by a contract of a pacto de retro sale of a portion of a building belonging to the aforementioned couple, situated at the corner of Serantes Street and a still unnamed road, of the Municipality of Jolo, Province of Sulu, Philippines, and that the said accused, in order to cover up his usurious transaction with the aforementioned Asaali Gani and Indah Atung Gani, made it appear in the aforementioned contract of pacto de retro sale executed between them that the whole amount loaned was P5,500, when in truth and in fact, the real and true amount loaned and received by the aforesaid Asaali Gani and Indah Atung Gani was only P3,000, the additional amount of P2,500 represented the interest for five (5) months of P500 per month, and that on or about the period comprising between the end of September, 1952 up to April 1953, in the same municipality of Jolo, Province of Sulu, Philippines, the said accused did then and there take and receive from the said Asaali Gani and Indah Atung Gani the-sum of P250, P900 and P2,500 as interest on the said loan of P3,000, thereby willfully, unlawfully and feloniously taking and receiving an interest which is very much higher than that prescribed by law, to the damage and prejudice of the aforesaid Asaali Gani and Indah Atung Gani in the total amount of P3,650, Philippine currency."

During the trial, Asaali Gani, one of the vendors in the deed of sale, was presented as a witness by the fiscal, and while testifying, he was made to identify the deed of sale which was marked as an exhibit, and was asked by said fiscal why the document was called deed of sale with pacto de retro if the real contract between the parties was one of loan. The defense objected to the question on the ground that no evidence of the terms of the agreement or contract other than the contract itself and its contents shall be allowed, The respondent Judge sustained the objection of the defense and later requested the prosecution and the defense each to submit a memorandum in support of their respective contentions. Later, respondent Judge issued his order of March 28, 1956, definitely sustaining the objection to the introduction of parol evidence intended to alter the terms of the deed of sale with

pacto de retro, on the ground that "to hold otherwise would be to establish a very dangerous doctrine which would throw wide open the doors to fraud * * *. and allow defaulting mortgagors and vendors a retro to harass those from whom they might have come for financial help."

We find an extended discussion of the question involved to be unnecessary for the reason that the said legal point has already been passed upon and definitely determined by this Court. In the case of Cuyugan vs. Santos, 34 Phil, 113, this Tribunal said:

"* * * The American doctrine on this subject does not differ materially from the principles set forth in our Civil Code.

"We insert here an extract of some length from the discussion of the subject (supported by numerous citations of authority) found in Jones' Commentaries on Evidence, (1913) volume 3, paragraphs 446, 447:

" '446. To show that instruments apparently absolute are only securities.—It has long been the settled rule that in courts exercising equitable jurisdiction it is admissible to prove by parol that instruments in writing apparently transferring the absolute title are in fact only given as security. The doctrine is thus stated by Mr. Field: "It is an established doctrine that a court of equity will treat a deed, absolute in form, as a mortgage, when it is executed as security for loan of money. That court looks beyond the terms of the instrument to the real transaction; and when that is shown to be one of security and not of sale, it will give effect to the actual contract of the parties. As the equity, upon which the court acts in such cases, arises from the real character of the transaction, any evidence, written or oral, tending to show this is admissible, * * *"

In the case of U.S. vs. Constantino Tan Quingco, Chua, 39 Phil., 552, we held:

"The form of the contract is not conclusive. Parol evidence is admissible to show that a written document though legal in form was in fact a device to cover usury. If from a construction of the whole transaction it becomes apparent that there exists a corrupt intent to violate the Usury Law, the Court should, and will, permit no scheme, however ingenious to becloud the crime of usury."

We find no reason for modifying or otherwise abandoning the doctrine laid down in the above-cited cases. Otherwise, it would be very difficult and next to impossible to prove a usurious transaction behind a cleverly prepared contract, which is clothed with all the outward forms and requisites of a valid contract of pacto de retro with right of repurchase. Just as the courts will go through and beyond the form of a contract of sale with pacto de retro in order to determine the real agreement between the parties, which is only an equitable mortgage to secure a loan, so they (the courts) may do the same and disregard the seemingly valid terms of a deed of sale with right to repurchase, and arrive at the conclusion that the transaction was only that of a loan, with interest beyond the legal rate. This is done specially when the attendant circumstances indicate that the transaction between the parties could not have been one of sale.

In the present case, according to the terms of the "Deed of Sale of Real Property with Right to Repurchase", the property sold is one-half of a building with an assessed value of P36,000. One-half of said assessed value is P18,000. It is of common knowledge that the assessed value of real property, specially in the provinces, is far below the real and market value of the same, some times, only one-half or even less; so that the real value of one-half of the building said to be sold, most likely, was double P18,000, that is to say, P36,000, if not more. It is hard to believe that this property was being sold for only P5,500. Under the circumstances, it was perfectly valid and proper for the prosecution to ask the offended party and alleged vendor, the question objected to by the defense, and otherwise introduce parol evidence to show that the real transaction and agreement between the parties was not one of sale, but of loan, and that the interest charged by the creditor was usurious; that a part of the amount of the loan of P5,500 had been retained by him as advance interest; and that the amount actually received by the borrower was only P3,000, and not P5,500. In view of the foregoing, the petitioner is granted and the order

complained of is set aside. Respondent Judge is hereby directed to allow the question, the objection to which he had previously sustained, and, otherwise, to permit the prosecution to introduce parol evidence to prove the allegations of the information. No costs.

Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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