

**RAYMUNDO M. DAPITON, NOW SUBSTITUTED BY ROWELLY DAPITON, REPORME DAPITON, LINDA DAPITON, DENNIS DAPITON AND MEARLY DAPITON, PETITIONERS, VS. COURT OF APPEALS AND MELJOHN DELA PE...**

*G.R. No. 107259. June 09, 1997*

Ponente: HERMOSISIMA, JR., J.

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**HERMOSISIMA, JR., J.:**

This is a petition for the review of the Amended Decision[1] of the Court of Appeals[2] affirming the judgment of the Regional Trial Court[3] which dismissed the complaint[4] for "annulment of deed of sale" filed by petitioner Raymundo M. Dapiton, now deceased and substituted in the instant case by his heirs.

Although petitioners and private respondent disagree on the question as to what transaction was actually entered into by the latter and the late Dapiton on May 6, 1967, the parties agree that the written document covering that transaction purports to be a deed of sale over the late Dapiton's house and lot in Almeria, Leyte. More significantly, both petitioners and private respondent depicted said deed of sale to have an annotation on the left hand margin of the said deed of sale, which reads, to wit:

“This is to certify that Raymundo Dapiton has one year to repurchase the property subject of this contract.

Meljohn dela Peña”

and another annotation at the back of the same deed, which reads, to wit:

“This is to inform anyone that Raymundo Dapiton will have one (1) year to repurchase the land subject matter of this sale.

Meljohn dela Peña”[5]

The antecedent facts of the case according to petitioners, are as follows:

“The gravamen of petitioner’s complaint before the trial court can be gleaned from paragraphs II to VII of the complaint filed with the lower court, to wit:

That sometime before May 5, 1967, xxx [Raymundo Dapiton] who was then needing money, approached the xxx [private respondent] and requested for a loan of P400.00 offering to place as security of said loan his residential house and lot located at Almeria, Leyte xxx.

xxx xxx xxx

That the fair market value of the same is not less than P3,000.00 more or less; it is the house where xxx [Dapiton] has been living for thirty (30) years up to the present.

That the xxx [private respondent] agreed to the request of xxx [Dapiton] and thereafter said xxx [private

respondent] prepared the corresponding document and xxx [Dapiton] was made to sign the same on the 5th day of May, 1967, before Notary Public, Dionisio R. dela Peña, father of herein defendant.'

Thus, the petitioners contend that the transaction between Raymundo Dapiton and the private respondent was one of loan of P400.00 to be paid within one years (sic) time with the property subject of the question deed as security for the payment of the said loan.”[6]

Private respondent, however, maintains that the transaction between him and the deceased Dapiton was one of absolute sale. Private respondent’s version of the antecedent facts in the instant case, is as follows:

“The case has its source in the execution of the Deed of Absolute Sale xxx by the xxx [deceased Dapiton] as vendor and xxx [private respondent] as vendee on May 6, 1967. Two days later, or on May 8, 1967, xxx [private respondent] at the instant of the xxx [deceased Dapiton], and without any consideration, made an annotation on the left-hand margin and at the back of the Deed of Absolute Sale to the effect that the xxx [deceased Dapiton] was given an option to repurchase the land within one (1) year from the date of the notations. This is the source of the controversy. xxx [Petitioners claim] that the true intention of the parties was one of venta con pacto de rectro while the xxx [private respondent] claims that their true intention was one of absolute sale and that the annotation was void for lack of consideration and, more importantly, because from the beginning the parties did not intend it to be complied with but only to appease the children of xxx [deceased Dapiton] who objected to the sale of the land by xxx [their late father].”[7]

Against the backdrop of conflicting factual claims of Petitioner and Private Respondent, the following facts are not disputed by both parties:

1. The deed of sale subject of the case involves both the house and lot of deceased Dapiton, said deed having stated that the sale of the lot included all improvements thereon.
2. The purchase price of the house and lot, as indicated in the deed of sale, is P400.00.
3. Dapiton, now deceased, turned over to private respondent Tax Declaration No. 2555 covering the subject house and lot as well as Official Receipt No. 211444 dated May 7, 1953, and Official Receipt No. 559150 dated May 30, 1952 involving tax payments made by Dapiton.
4. Private respondents caused the cancellation of Tax Declaration No. 2555 in the name of Dapiton and obtained Tax Declaration No. 4101 in his name.
5. Private respondent paid realty taxes on the subject house and lot as evidenced by Official Receipt No. 155719 dated May 8, 1968 and Official Receipt No. 2041208 dated October 1, 1969, both receipts of which are in the name of private respondent.
6. Dapiton sent a letter dated May 3, 1968 to private respondent and enclosed therewith two (2) money orders worth P400.00 as final and full satisfaction and/or redemption of the subject house and lot.
7. Private respondent’s wife, Lolita de la Peña, received the aforesaid letter and money orders on May 4, 1968.
8. In a letter dated May 9, 1968, private respondent rejected the redemption of Dapiton of the subject house and lot on the ground that the sale they executed was an absolute sale.
9. Dapiton had also entered into similar transactions in the past involving the same house and lot with one Leodegario Alabarca in 1962 and one Manuel delos Reyes in 1964. On each of the two occasions, Dapiton was given P400.00.
10. On April 7, 1968, Dapiton again entered into the same arrangement involving his house and lot. This time, it was with one Sinforosa Jaguros, but the amount involved remained the same, i.e., P400.00.

11. The deceased Dapiton, up to the time of his death, occupied the property. His heirs, herein petitioners, remain in possession up to the present.

The court a quo, confronted with all the aforementioned facts and herein parties' respective claims, rendered judgment in favor of private respondent and accordingly dismissed the complaint for annulment of deed of sale filed by Dapiton, petitioners' deceased father. The court a quo mainly found that the price of P400.00 was adequate and conscionable and that the deed of sale in question is one of an absolute nature. At any rate, the court a quo postulated that the redemption made by Dapiton was undertaken out of time and without compliance with Articles 1601 and 1616 of the Civil Code.

Aggrieved, petitioners appealed from the decision of the court a quo and asked the respondent Court of Appeals to reverse the same. In a decision dated December 10, 1991, petitioners were granted the relief they sought. The dispositive portion of that decision reads as follows:

“CONFORMABLY TO THE FOREGOING, the decision appealed from is hereby REVERSED AND SET AS[IDE,]and a new one is rendered in lieu thereof, ordering defendant-appellee to accept the P400.00 deposited by plaintiff-appellant with the Municipal Court of Almeria, Leyte, and to execute a deed of sale of the subject parcel of land in favor of plaintiffs-appellants.

No pronouncement as to costs.

SO ORDERED.”[8]

With that, petitioners thought that they had finally won back their land. Their triumph, however, was short-lived. Private respondent filed his Motion for Reconsideration on April 15, 1992. Respondent Court of Appeals found merit in private respondent's Motion for Reconsideration and granted the same. Thus, respondent appellate court rendered an Amended Decision in favor of private respondent the entirety of which reads:

“On December 10, 1991, a decision was rendered by this Division in Civil Case No. 23256, reversing and setting aside the decision of Branch 16, Regional Trial Court of Biliran, Leyte, which decision dismissed the complaint and counterclaims. In reversing the trial court's decision and deciding in favor of the xxx [petitioner] We quote the pertinent portion of the decision:

‘What We thus have is a contract of absolute sale between the parties. We need not look at extraneous circumstances, such as xxx [Dapiton's] motive into entering a contract of conveyance, as the terms and conditions thereof are clear and explicit, and leave no doubt upon the intention of the contracting parties. Therefore, the literal meaning of its stipulations should control (Article 1370, Civil Code of the Philippines). xxx [Petitioner's] cannot deny the ‘Deed of Absolute Sale’ executed by xxx [Dapiton] in favor of private respondent on May 6, 1967.

However, the subject annotation made on May 8, 1967, does not also escape Us. The same raises an issue of whether or not it novated the deed of absolute sale into one of sale with a right to repurchase.

It did not. In conventional redemption, the right to redeem must be reserved or stipulated at the moment of the perfection of the contract, and not afterwards (Article 1601, Civil Code of the Philippines). An agreement granting such right to redeem subsequent to the perfection of the contract of sale is a mere promise to sell (5 Ambrosio Padilla, Civil Law, Civil Code Annotated, p. 275 [1968] citing 10 Manresa 311).’ (Decision, pp. 7-8; Rollo, pp. 73-74).’

In the light of the above holding We feel constrained to reconsider Our conclusion that ‘the subject annotation is a contract to buy and sell’ and ‘is not an accepted unilateral promise to sell’ for the following reasons:

1) There is no allegation or proof that xxx [Dapiton] promised to buy or repurchase the land subject of this suit, for a specific price; neither is there proof that the xxx [private respondent] promise [sic] to sell the same at a specific price agreed upon.

2) The agreement between the parties which was entered into on May 8, 1967 was not a 'promise to sell for a certain price' but a mere option given to xxx [Dapiton] to repurchase the property within one year. It was clearly a mere option for xxx [Dapiton] to buy back the property, subject to (1) an exercise by the xxx [Dapiton] of the option; and (2) subject also to an agreement as to the price. The option maybe withdrawn by the xxx [private respondent] in case of disagreement as to the price and/or failure of the xxx [Dapiton] to exercise the option. There was no clear indication of the xxx [Dapiton's] promise to buy or accept the option to repurchase. This was clearly indicated when xxx [private respondent] wrote xxx [Dapiton] a letter on May 9, 1968 refusing xxx [his] offer to buy. Article 1479 of the Civil Code provisions that 'a promise to buy and sell a determinate thing for a price certain is reciprocally demandable' is not applicable because there was no agreement as to price so that the price was not certain and refusal by xxx [private respondent] is a clear manifestation of this fact.

‘A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or sell a determinate thing for a period certain is binding upon the promissory if the promise is supported by a consideration distinct from the price.’

There is nothing on record to show that the parties had agreed on a consideration distinct from the price of the sale, which is construed as a separate consideration to support the unilateral promise to sell.

For reasons above stated and in the light of the applicable law and jurisprudence on the matter, the Motion for Reconsideration is GRANTED. Our decision dated December 10, 1991 is reversed and set aside and the judgment of the trial court is AFFIRMED, without pronouncement as to costs.

SO ORDERED.”[9]

Essentially, respondent appellate court declared that the transaction entered into by Dapiton and private respondent was an absolute sale of the former’s house and lot to the latter, and that the two annotations regarding Dapiton’s right to repurchase the subject house and lot, constituted a mere promise to sell which is null and void, because there was no determinate purchase price indicated and there was no consideration therefor.

Unable to accept the ultimate conclusion of respondent appellate court, petitioners resorted to the instant petition to obtain a reversal of the foregoing Court of Appeals decision. Petitioners now exhort us to declare the transaction between their deceased father, Raymundo Dapiton, and private respondent, to be either a loan, as claimed by Dapiton in the complaint for amendment of deed of sale which he filed in the court a quo, or in the alternative, an equitable mortgage, in application of legal the presumption under Article 1602 of the Civil Code.

We rule in favor of the petitioners.

Article 1602 of the New Civil Code provides for the instances when an equitable mortgage may be presumed:

"Article 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 usually 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 benefit to be received by the vendee as rent or otherwise shall be considered as the interest which shall be subject to the usury law.”

Closely examining the facts of this case, we find that, contrary to the findings of the Court of Appeals, there are numerous indications that the contract effected between the parties is actually an equitable mortgage and not an absolute deed of sale.

Firstly, it is without dispute that private respondent Dela Peña made two (2) annotations on the deed of sale, one at the left hand margin and another at the back of the page. These annotations grant Raymundo Dapiton the right to repurchase his property within one year. This right of repurchase is a clear contravention of private respondent’s claim that the deed of sale was meant to be absolute.

Secondly, it has been established that the deceased Dapiton habitually borrowed money from numerous acquaintances, using the said property as security for the loan. The amount borrowed, amounting to Four Hundred Pesos (P400.00), invariably remained the same. Although these loans were constantly denoted as “sale with right of repurchase,” the deceased Dapiton continuously remained in possession of the property despite a succession of such loan transactions. Evidently, all these transactions were equitable mortgages.

Thirdly, we find it difficult to believe that the private respondent would tolerate the uninterrupted occupation of the property by the Dapitons simply because he has no need for it just yet. In the light of the fact that the private respondent has been in dispute with the Dapitons since 1968, and considering his claim of absolute ownership, it is unthinkable for private respondent to let Dapiton and his heirs remain and make use of the property for almost thirty (30) years. In addition, although the tax declarations for the property have been transferred to private respondent’s name and he has been continuously paying the realty taxes thereon, he has made no move to oust the petitioners from their possession. This circumstance clearly falls within the ambit of Article 1602 as a badge of an equitable mortgage.

Fourthly, the private respondent is a member of the bar, well-versed in the intricacies of the law. We thus find it improbable that he would agree to add the annotations pertaining to the deceased Dapiton’s right of repurchase only to appease Dapiton’s children. If, as he claims, the sale was indeed absolute, the fact that he would place such annotations as would put in question the absoluteness of the sale raises some doubt as to the true nature of the transaction involved. After all, if the property is truly his by right, no amount of objections raised by the children of the elder Dapiton would change the fact that the sale is already a *fait accompli*. No vendee in his right mind would agree to any act which would weaken his absolute claim to a property sold to him without any restraint or condition. If the sale was indeed absolute, why grant Dapiton a right to repurchase at all?

Lastly, Article 1603 of the New Civil Code provides:

“Article 1603. In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.”

In the case at bar, the true nature of the contract between Dapiton and dela Peña is the crux of the issues raised in this petition. Considering the circumstances of this case, we resolved the doubt in favor of the petitioner. The actuations of the private respondent are highly suspect, if not downright dishonorable. AS A JUDGE and member of the bar, he is charged with the duty to act fairly and equitably. He has not been fair, nor has been forthright in his dealings with Raymundo Dapiton.

Consider this proven facts: the private respondent first tried to change the nature of the transaction by preparing a contract which did not reflect the true intent of the parties. Next, caught in his duplicitousness, he pretended to rectify his mistake by adding an annotation granting the elder Dapiton the right of repurchase. Then, he deliberately evaded receiving payment from the elder Dapiton so that the one year period would eventually lapse and the transfer of ownership to him would become absolute. And as if these were not enough, he now seeks to convince this court that the annotation granting the elder Dapiton the right to repurchase, which he himself prepared, is not valid for lack of consideration. This travesty must not be permitted to go on. We now write this finis to the private respondent's underhandedness.

WHEREFORE, premises considered, the petition for certiorari is GRANTED, the amended decision of the respondent Court of Appeals is REVERSED and SET ASIDE. Private respondent Meljohn dela Peña is ordered to accept the P 400.00 deposited by the petitioners with the Municipal Trial Court of Almeria, Leyte, and to execute a Deed of Sale over the subject property in favor of the petitioners.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

Padilla, (Chairman), J., On Leave

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[1] Dated March 25, 1992 penned by Associate Justice Jose C. Campos and concurred in by Associate Justices Alfredo M. Marigomen and Fortunato A. Vailoces; Rollo, pp. 31-34.

[2] Sixth Division.

[3] RTC, Eight Judicial Region, Branch 16, Naval, Subprovince of Biliran, Leyte.

[4] Docketed as Civil Case No. B-0384.

[5] Petition, pp. 4-5, Rollo, pp. 7-8; Comment, pp. 3-4, Rollo, pp. 53-54.

[6] Petition, pp. 3-4; Rollo, pp. 6-7.

[7] Memorandum of Private Respondent, pp. 3-4; Rollo, pp. 138-139.

[8] Decision of the Court dated December 10, 1991, p. 12; Rollo, p. 29.

[9] Rollo, pp. 31-33.

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