

THELMA P. OLEA, PETITIONER, VS. COURT OF APPEALS, ELENA VDA. DE PACARDO, JESUS PALENCIA, ELIZABETH PALENCIA AND MONSERRAT PACIENTE, RESPONDENTS.

G.R. No. 109696. August 14, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review of the decision of the Court of Appeals affirming that of the court a quo which dismissed the complaint of petitioner for recovery of possession on the ground that the action had already prescribed and that the deed of sale with right to repurchase on which petitioner based her claim was an equitable mortgage.

On 27 January 1947 spouses Filoteo Pacardo and Severa de Pacardo executed a deed of Sale Con Pacto de Retro over Lot No. 767 of the Passi Cadastre covered by Transfer Certificate of Title No. 26424 in their name for a consideration of P950.00 in favor of Maura Palabrica, predecessor in interest of petitioner, subject to the condition that -

x x x if we, the said spouses, Filoteo Pacardo and Severa de Pacardo, our heirs, assigns, successors-in-interest, executors and administrators shall and will truly repurchase the above-described parcel of land from the said Maura Palabrica, her heirs, assigns, successors-in-interest after THREE YEARS counting from the date of the execution of this instrument, to wit, on January 27, 1950 in cash payment in the sum of Five Hundred Pesos, Philippine currency, plus Four Hundred and Fifty Pesos (P450), also lawful currency, in cash or eighteen (18) cavans of palay (Provincial Measurement) at our option, then this sale shall become null and void and of no force and effect whatsoever. On the contrary, the same will become irrevocable, definite and final and will vest complete and absolute title on the vendee upon the premises.[1]

The contract of sale with right to repurchase was acknowledged by the vendors before Notary Public Victorio Tagamolila on the same day the contract was executed in the Municipality of Passi, Province of Iloilo. The vendors also delivered to the vendee their owner's copy of the title.

After the execution of the sale, the Pacardo spouses as vendors remained in possession of the land and continued the cultivation thereof. Since the sale on 27 January 1947 up to August 1987, or for a period of about 40 years, the spouses delivered annually one-third (1/3) of the produce of the land to Maura Palabrica and kept for themselves the remaining two-thirds (2/3).

On 27 January 1950, despite the lapse of three (3) years, the Pacardo spouses did not repurchase the land but faithfully continued to give 1/3 of the produce to Maura Palabrica. When the spouses died, their son Filoteo Jr., took over the possession and assumed the cultivation of the land and, like his parents, gave 1/3 of the produce to Maura Palabrica and later to her daughter, petitioner herein, who would eventually buy from her the lot subject of the litigation.

On 22 September 1966 Maura Palabrica caused the registration of the Sale Con Pacto de Retro with the Register of Deeds of Iloilo and its annotation on Transfer Certificate of Title No. 26424 covering the subject lot.

On 10 May 1978 Maura Palabrica sold Lot No. 767 for P40,000.00 to one of her daughters, petitioner Thelma Olea. From then on it was petitioner who received the one-third (1/3) share of the annual produce of the land from Filoteo Pacardo, Jr., until he died in August 1987. His widow Elena Vda. de Pacardo however refused to give to petitioner the one-third (1/3) share of the produce. After Elena transferred residence to another barangay the spouses Jesus and Elizabeth Palencia took over the possession and cultivation of the property. Elizabeth Palencia is a sister of Filoteo Jr., and is one of the children of spouses Filoteo and Severina Pacardo. The Palencias delivered the share of the produce not to petitioner but to respondent Elena Pacardo.

Hence, on 25 January 1989, petitioner filed a complaint against Elena Pacardo and the spouses Jesus and Elizabeth Palencia for recovery of possession with damages. She alleged that she was the owner of Lot No. 767 having acquired the same from her mother Maura Palabrica through a deed of sale, who in turn acquired the lot from the spouses Filoteo and Severa Pacardo through a pacto de retro sale, and that due to the failure of the spouses to redeem the property three (3) years thereafter ownership thereof passed on to Maura Palabrica who later caused the registration of the Sale Con Pacto de Retro with the Registry of Deeds of Iloilo and its annotation on TCT No. 26424.

Private respondents Elena Vda. de Pacardo and Jesus and Elizabeth Palencia filed their answer alleging that their parents intended the disputed transaction to be an equitable mortgage and not a sale with right to repurchase. Respondent Monserrat Paciente, another daughter of the vendor-spouses Filoteo and Severa Pacardo, filed an answer in intervention raising likewise as defense that the Sale Con Pacto de Retro was indeed an equitable mortgage.

On 19 February 1991 the trial court rendered judgment dismissing the complaint. Petitioner appealed to the Court of Appeals which on 16 December 1992 affirmed the judgment of the trial court.

In the instant recourse, petitioner assails the Court of Appeals for its conclusions and findings allegedly grounded entirely on speculations, surmises, conjectures and misapprehension of facts.[2] Petitioner submits that the terms and conditions of the Sale Con Pacto de Retro between her mother Maura Palabrica and the Pacardos on 27 January 1947 are clear and leave no room for interpretation; that the parties to the transaction have specified that the consideration of the sale was P950.00 and the repurchase price was P500.00 in cash plus P450.00 cash or eighteen (18) cavans of palay at the option of the vendor-spouses in case they repurchased the property three (3) years afterwards; and that the Court of Appeals erred in holding that the repurchase price was only P450.00 or eighteen cavans of palay.

Petitioner also asserts that the failure of her mother, the vendee Maura Palabrica, to consolidate ownership under Art. 1607 of the New Civil Code should not be a ground for considering the sale to be an equitable mortgage because both parties have stipulated in the contract that when the spouses should fail to repurchase Lot No. 767 on 27 January 1950 complete and absolute title would forthwith be vested in Maura Palabrica; and that even granting that Art. 1607 of the New Civil Code, which took effect 30 August 1950, be granted retroactive effect Maura Palabrica had already acquired a vested right of ownership over the land as of 27 January 1950 which Art. 1607 can no longer invalidate under Art. 2252 of the New Civil Code. Moreover, petitioner submits that the Pacardo spouses remained in possession of the land they sold to Palabrica because of their good relations with each other and the latter consented that the spouses would be the ones to till the land.

We cannot sustain petitioner. Art. 1602 of the New Civil Code provides that the contract of sale with right to repurchase shall be presumed to be an equitable mortgage in any of the following cases: (a) when the price of the

sale is unusually inadequate; (b) when the vendor remains in possession as lessee or otherwise; (c) 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; (d) when the purchaser retains for himself a part of the purchase price; (e) when the vendor binds himself to pay the taxes on the thing sold; and, (f) 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. Being remedial in nature, Art. 1602 may be applied retroactively to cases prior to the effectivity of the New Civil Code.[3] Hence it may apply to the instant case where the deed of sale with right to repurchase was executed on 27 January 1947.

It has been held that a contract should be construed as a mortgage or a loan instead of a pacto de retro sale when its terms are ambiguous or the circumstances surrounding its execution or its performance are incompatible or inconsistent with the theory that it is a sale.[4] Even when a document appears on its face to be a sale with pacto de retro the owner of the property may prove that the contract is really a loan with mortgage by raising as an issue the fact that the document does not express the true intent and agreement of the parties. In this case, parol evidence then becomes competent and admissible to prove that the instrument was in truth and in fact given merely as a security for the repayment of a loan. And upon proof of the truth of such allegations, the court will enforce the agreement or understanding in consonance with the true intent of the parties at the time of execution of the contract.[5] This principle is applicable even if the purported Sale Con Pacto de Retro was registered in the name of the transferee and a new certificate of title was issued in the name of the latter.[6]

There is no dispute that when Maura Palabrica "bought" the land on 27 January 1947 the vendors, the Pacardo spouses, remained in possession of the property and cultivated the same. Their son continued the cultivation when the spouses died, which cultivation was continued later by his widow Elena Vda. de Pacardo and then by his sister Elizabeth Palencia. During the direct examination, petitioner admitted -

Q.

And who later on cultivated this lot 767 if you know?

A.

When the Pacardos sold to my mother, it was the spouses who cultivated the land. When Filoteo Pacardo Sr. could no longer till, it was Filoteo Pacardo Jr. who took over.[7]

Defendant-intervenor Monserrat Paciente also testified -

Q.

Do you know whether any transaction was had between your mother Severa Pacardo and Maura Palabrica involving this Lot No. 767?

A.

There was a transaction. Every year, dues was (sic) paid to this land when the land was mortgaged. It was a 1/3 transaction, 1/3 was given to them and 2/3 were taken by us.

Q.

When did you come to know that alleged transaction between your parents and the late Maura Palabrica?

A.

When I came to the age of reason, it was told to me by my parents.[8]

The rule is settled that where in a contract of sale with pacto de retro the vendor remains in physical possession of the land sold as lessee or otherwise, the contract should be considered an equitable mortgage.[9] The same presumption applies when the vendee was given the right to appropriate the fruits thereof in lieu of receiving interest on the loan.[10]

Moreover, the terms of the document itself can aid in arriving at the true nature of the transaction. Where the contract contains a stipulation, as in this case, that upon payment by the vendor of the purchase price within a certain period the document shall become null and void and have no legal force or effect, the purported sale should be considered a mortgage contract. In pacto de retro sale the payment of the repurchase price does not merely render the document null and void but there is the obligation on the part of the vendee to sell back the property.[11]

It has been consistently held that the presence of even one of the circumstances enumerated in Art. 1602 of the New Civil Code is sufficient to declare a contract of sale with right to repurchase an equitable mortgage.[12] This is so because pacto de retro sales with the stringent and onerous effects that accompany them are not favored. In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.[13]

Petitioner, to prove her claim, cannot rely on the stipulation in the contract providing that complete and absolute title shall be vested on the vendee should the vendors fail to redeem the property on the specified date. Such stipulation that the ownership of the property would automatically pass to the vendee in case no redemption was effected within the stipulated period is void for being a pactum commissorium which enables the mortgagee to acquire ownership of the mortgaged property without need of foreclosure. Its insertion in the contract is an avowal of the intention to mortgage rather than to sell the property.[14]

Consequently, there was no valid sale to Maura Palabrica. Ownership over the property was not transferred to her for she was merely a mortgagee. There being no title to the land that Palabrica acquired from the spouses Filoteo and Severa Pacardo, it follows that Palabrica had no title to the same land which could be conveyed to petitioner.[15] Hence there is no legal basis for petitioner to recover possession of the property.

It is clear from the contract that the amount loaned to the Pacardo spouses was P950.00 and Lot No. 767 was mortgaged as security. The spouses were allowed under the contract to pay the amount of the loan on 27 January 1950 by tendering the amount of P500.00 in cash and P450.00 cash or 18 cavans of palay at their option. The trial court made its factual finding that from 1947 when the purported sale was executed to 1972 alone, the spouses and their successors in interest delivered a total of 1,166 cavans of palay to Maura Palabrica. The delivery of 1/3 of the annual produce to Palabrica and later to petitioner continued until 1987. Under the last paragraph of Art. 1602, this produce received by the alleged vendee as rent or otherwise should be considered as interest.

There is no dispute that the Pacardo spouses or their successors in interest failed to pay the amount of the loan on 27 January 1950 as stipulated in the contract although they continued to deliver the produce to Palabrica and petitioner until 1987 by way of interest on the loan. Even if we treat petitioner's action to recover possession of Lot No. 767 as one for the enforcement of her right as mortgagee, the same has already prescribed. Art. 1142 of the New Civil Code provides that a mortgage action prescribes after ten (10) years. Since 27 January 1950 when the Pacardo spouses failed to pay the loan up to 1989 when the action for recovery of possession was filed, thirty-nine (39) years had already elapsed. As a result, petitioner is not only barred by prescription from instituting her action; she is also guilty of estoppel by laches.

WHEREFORE, the petition is DENIED and the assailed decision of the Court of Appeals dated 16 December 1992 sustaining that of the Regional Trial Court of Iloilo City is AFFIRMED. Costs against petitioner.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Records, p. 48.

[2] Rollo, p. 7.

[3] Balatero v. IAC, G.R. No. 73889, 30 September 1987, 154 SCRA 530.

[4] Tolentino v. Gonzales, 50 Phil. 558 (1927).

[5] De Ocampo v. Zaporteza, 53 Phil. 442 (1929).

[6] Macapinlac v. Repide, 43 Phil. 770 (1922).

[7] TSN, 28 December 1989, p. 17.

[8] TSN, 29 January 1990, pp. 4 and 9.

[9] Santos v. Court of Appeals, G.R. No. 83664, 13 November 1989, 179 SCRA 363.

[10] Adrid v. Morga, 108 Phil. 927 (1960).

[11] Tolentino, Arturo M., Civil Code of the Philippines, 19th Ed., Vol. V, p. 159.

[12] Lizares v. Court of Appeals, G.R. No. 98282, 6 September 1993, 226 SCRA 112.

[13] Art. 1603, New Civil Code.

[14] Vda. de Reyes v. de Leon, No. L-22331, 6 June 1967, 20 SCRA 369.

[15] Solid State Multi-Purpose Corp. v. Court of Appeals, G. R. No. 83383, 6 May 1991, 196 SCRA 630.

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