

ASUNCION JUANIR VDA. DE ALVAREZ, PETITIONER, VS. COURT OF APPEALS, AND JOSEFA ALMEDA (DECEASED) NOW HER HEIRS, NAMELY: FREDISVINDA A. CONSUNJI, ANGELITA A. CRUZ, EMMANUEL M. ALM...

G.R. No. 110970. March 16, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

The main issue for resolution is whether Lot 129 at Penefrancia Avenue, Naga City, with an area of 510 square meters, was actually sold by Asuncion Juanir Vda. de Alvarez to Josefa Almeda or merely mortgaged to secure a loan.

In a complaint for “Recovery of Possession” filed on January 30, 1981, with the Court of First Instance of Camarines Sur, plaintiff Josefa Almeda alleged that, as the registered owner of the said Lot 129, she leased a 170 square-meter portion thereof, including the building erected on it, to defendant Asuncion Juanir Vda. de Alvarez for a monthly rental of P900.00; that the defendant failed to pay the rentals from August to December 1978, from October to December 1979, and from January 1980 onward, and did not keep her promise to leave the rented property after Christmas of 1979; and that despite written demands, she had refused to vacate the premises.[1]

In her answer, defendant Alvarez averred that sometime in 1973, the plaintiff offered to lend her money to settle her unpaid loan of P20,000.00 with the Continental Bank, Naga City, provided that the land given as security for the said loan would be mortgaged to the plaintiff instead. For this purpose, the plaintiff asked her to sign a document, which she did not read nor was it read to her, that she assumed was a mortgage pursuant to their agreement. It was only later that she discovered it was a deed of sale of her land together with the improvements thereon for the sum of P80,000.00.[2]

While the case was pending in the trial court, plaintiff Josefa Almeda died and was substituted by her heirs, the private respondents herein.

On April 20, 1990, the lower court rendered judgment: 1) declaring that the contract entered into by the parties was one of absolute sale; 2) confirming the validity of the contract; 3) ordering defendant Alvarez and her successors-in-interest to surrender the possession of the subject lot to plaintiff Almeda’s heirs or successors-in-interest; 4) ordering the defendant to pay the monthly rental of P900.00 for the entire duration of her occupancy of the land and building until the same was vacated, P2,500.00 as attorney’s fees, and P500.00 as expenses of litigation; and 5) granting the writ of injunction preventing the defendant or her heirs or successors-in-interests from committing further acts of dispossession.[3]

On appeal, the decision was affirmed by the respondent court,[4] which also subsequently denied the appellant’s motion for new trial and/or reconsideration. Alvarez then came to this Court, insisting that the contract invoked by Almeda should be treated as an equitable mortgage on the grounds that: 1) the document purporting on its face to

be an absolute sale was in fact a mortgage given as a security for the repayment of a loan; 2) being merely a second grader, she could not have intelligently understood the document she signed; 3) the price is grossly inadequate; and 4) she continued to possess the property in the concept of an owner.

The petitioner bases her arguments on the presumptions laid down by Article 1602 of the Civil Code, in relation to Article 1604 of the same Code, said provisions reading as follows:

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 benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

Art. 1604. The provision of Article 1602 shall also apply to a contract purporting to be an absolute sale.

The document evidencing the transaction between Josefa Almeda and the petitioner is denominated a contract of sale.^[5] However, parol evidence may be introduced to show that the agreement was in fact merely a mortgage masquerading as a sale.

Section 9, Rule 130, of the Rules of Court provides:

When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written, agreement if he puts in issue in his pleading:

- a) an intrinsic ambiguity, mistake or imperfection in the written agreement;
- b) the failure of the written agreement to express the true intent and agreement of the parties thereto;

x x x

There is no ambiguity, mistake or imperfection in the deed of sale. We also find no compelling reason to consider the express stipulations in the deed of sale were intended only to create an equitable mortgage. The petitioner has not presented clear, satisfactory and convincing evidence that the real intention of the parties to the said deed was to make the property in question merely a security for a loan extended by Almeda to the petitioner.

Article 1371 of the Civil Code provides that in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. In the case before us, the facts clearly show that the transaction between Almeda and the petitioner was indeed a contract of sale.

It is noted that in May 1973, Almeda caused the registration of the disputed deed of sale, resulting in the cancellation of Original Certificate of Title No. 289[6] in the name of the petitioner and the consequent issuance of Transfer Certificate of Title No. 6999[7] in Almeda's favor. The petitioner admitted having learned this fact as early as 1973, first from her lawyer and personally afterwards, when she went to the Register of Deeds to verify the matter.

If Alvarez was really misled into signing the deed of sale, she should have protested or at least notified the Register of Deeds that she had only mortgaged and not sold the land to Almeda. Better still, she should have taken steps to annul the sale and recover the property. Inexplicably, she did nothing at all. It was only in 1981, when Almeda sued her for recovery of the property, that she alleged in her answer that the deed of sale was a disguised mortgage. It took her all of eight years to challenge the registration of the disputed property in favor of Almeda.

The Court also notes that, also in 1973, Almeda declared the subject property in her name for tax purposes, resulting in the cancellation of the tax declaration in the petitioner's name.[8] Alvarez never questioned the said cancellation nor did she ask for the tax declaration in her name to be revived.

It is a matter of record that when the petitioner and Almeda were sued in 1979 by Dolores Salvan, one of the lessees of the subject property, she declared in her answer[9] to the complaint:

4. That defendant admits that she has been receiving plaintiff's rentals but from 1973 she has been receiving such rentals for defendant Josefa Almeda after the latter purchased the land from her and that when she refused to receive plaintiff's rental for March, it was upon instruction of defendant Josefa Almeda, the owner of the land;

5. That she denies the allegations contained in paragraph 6 of the complaint, the truth being that if she refused to accept payment, it was because of the instructions made upon her by her co-defendant, owner of the land, Josefa Almeda;

9. That plaintiff knows that she has no cause of action against the herein defendant, she being no longer the owner of the land or the leased premises, x x x (Emphasis supplied).

And when in May 1979, another lessee, Basilio Caning, filed a complaint against her, the petitioner made the following allegations in her answer:[10]

4. That she denies the allegations contained in par. 4 of the complaint, the truth being that plaintiff has never tendered any payment in February or March, what happened was that defendant, upon instruction of Mrs. Josefa Almeda, who is the present owner of both the land and the building occupied and leased by plaintiff, Mrs. Almeda having long bought this from defendant, she gave notice to plaintiff to vacate the premises as the land will be used for the construction of a multi-story building to keep up with the growing commercial needs of the City;

5. That she specifically denies each and every allegation contained in pars. 5, 6, 7, and 9 of the complaint, she having no knowledge of any useful improvement made by plaintiff, nor has she given any consent therefor, and she knows not of any portion of the building which needed repairs and besides as already stated defendant sold the lot including the building to Mrs. Josefa Almeda since 1973 and therefore she had no more obligation to repair the same, but the owner if at all which is Mrs. Almeda;

x x x x x

7. That the complaint does not include the real parties in interest, Mrs. Josefa Almeda, who is the registered owner and lessor of the lot and building in question and without her included no final determination of this case can be had;

x x x x

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that this case be dismissed, or if at all that it be prosecuted against the proper party, Mrs. Josefa Almeda, x x x". (Emphasis supplied).

The petitioner points out that it was Almeda who paid for the services of the lawyer who prepared the said pleadings, but that fact alone does not disprove or nullify her declarations therein.

An admission in a pleading in one action may be admitted in evidence against the pleader or his successor-in-interest at the subsequent trial of the same suit or in another action involving the same issue or in which the admission is pertinent to the issues.[11] It is true that this rule will not apply if the pleading in which the statement is found was not signed by the party and no proof was presented that he had authorized the making of such admission.[12] In the case at bar, however, the aforequoted answers bear the signature of the petitioner, who in fact acknowledged it at the trial.[13]

Alvarez now claims that she signed the pleadings merely upon the prodding of Almeda, who had not read or explained their contents to her. The petitioner's behavior is certainly strange, considering that this happened six years after she and her lawyer came to know about the transfer of the land in Almeda's name. Almeda and Alvarez would have been at loggerheads by that time. Yet, Alvarez would have this Court believe that she still willingly left their common defense to Almeda and willingly signed the pleadings without clearing them first with her own lawyer. It is inconceivable that Alvarez would still have trusted Almeda if it is true that she had earlier been deceived by this person.

The petitioner says Almeda took advantage of her illiteracy but her own evidence reveals her shrewdness and shows that she is not all that gullible or helpless, as she pretends. She herself negated this pose when she testified that she was able to mortgage the subject lot no less than three times with different banks without any difficulty or the assistance of a lawyer. She said she knew she could manage by herself.[14]

Alvarez also claims that she could not have sold the disputed property for only P80,000.00 because she even turned down an offer in 1971 to buy the land at P265,200.00. She presents no corroboration, however, such as the testimony of the supposed offeror.

To show that the consideration of P80,000.00 was grossly inadequate, the petitioner invites attention to Tax Declaration No. 16807[15] and a deed of sale covering a nearby 906 square meter lot, which was sold for P600,000.00.[16]

The deed was executed on June 22, 1987. Surely, it cannot be considered evidence of the market value of the land in 1973, all of fourteen years earlier. As for the tax declaration, which was issued on May 14, 1974, the true market value of the land in question is placed at only P60,000.00 and that of the building at only P7,200.00, for a total of P67,200.00. This instrument belies the petitioner's contention that the price of P80,000.00 is grossly inadequate.

The petitioner points to certain documents she filed with the respondent court tending to show, from a comparison of the 1987 market value of a lot adjacent to the disputed property and the 1973 market value of the disputed property itself, that the consideration for her land was grossly inadequate. The Court of Appeals did not err in rejecting these documents on the ground that they had not been formally offered as evidence with the trial court. Section 34, Rule 132, of the Rules of Court provides that the court shall not consider evidence not formally offered. Furthermore, the documents could hardly be considered newly-discovered evidence to justify the grant of a new trial as they were existing and known to the petitioner at the time of the original trial.

Even on the assumption that the price of P80,000.00 was below the market value of the lot in 1973, it would nonetheless not be gross and unconscionable, as the petitioner insists. According to Tolentino, the presumption of equitable mortgage will apply only if it is clearly shown that the consideration was unusually inadequate such that the mind revolts at it and such that a reasonable man would neither directly or indirectly be likely to consent to it.[17]

In *Cuyugan v. Santos*,[18] the Court held that another test to determine whether a conveyance is a sale or merely a security for the payment of a loan is the continued existence of a debt or liability on the part of the alleged mortgagor. If such a relationship exists, the transaction is a mortgage; otherwise, it is a contract of sale.

In the present case, the petitioner admitted that she had never paid the alleged indebtedness[19] and there is no evidence either that she attempted or offered to discharge the alleged mortgage. On the contrary, it was Almeda, the alleged lender, who had made payments to the petitioner as follows: P40,000.00 on May 23, 1973;[20] P60,000.00 on February 11, 1974;[21] P2,000.00 on February 7, 1975;[22] and P18,000.00 on April 22, 1976[23]. All the receipts acknowledging the said payments were signed by the petitioner, who did not controvert them at the trial.

It would appear from these payments that the true selling price of the land was P120,000.00, which was way above the market value stated in the 1973 tax declaration covering the property in question. There was an obvious reason for fixing the consideration at only P80,000.00 in the disputed deed of sale. As the petitioner blandly admitted in her brief, “the true consideration of sales of land are not usually placed in the documents of conveyances to reduce the documentary stamps, the transfer tax fees as well as other taxes chargeable relative thereto.”

The petitioner next asserts that if the deed of sale were considered a contract of *antichresis*, the loan of P80,000.00 would be deemed fully paid or offset by the rentals received by Almeda (or the private respondents) from the 340 square-meter portion of the subject lot since 1973 up to the present. The aggregate amount of these rentals could be more than P211,400.00.

This contention is untenable.

The Civil Code provides:

Article 2132. By the contract of *antichresis* the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit.

Article 2134. The amount of the principal and of the interest shall be specified in writing; otherwise, the contract of *antichresis* shall be void.

There is no provision in the disputed document specifically authorizing Almeda to receive the fruits of the land in question with the obligation to apply them to the payment of interest if any was due, and to the principal of the alleged loan. The instrument also does not fix the amount of P80,000.00 as the petitioner’s principal obligation.

Alvarez also stresses that she remained in actual possession of the subject property and says this possession has given rise to the presumption of an equitable mortgage. That presumption cannot override her own judicial admission that Almeda was the new owner of the property, having bought it from her way back in 1973. If Alvarez was indeed in possession, it was because the property had been leased to her by Almeda, who in fact later sued her for its recovery and payment of back rentals.

There is no merit in the private respondents’ submission that the decision of the respondent court has already

become final and executory. The petitioner received that decision on May 5, 1993, and so had until May 20, 1993, to file a motion for new trial or reconsideration. The registry receipt and the envelope containing her motion disclose that it was mailed on May 14, 1993, well within the period to stay enforcement of the judgment under review.

The private respondents' contention that the petitioner failed to comply with Par. 4 of Circular 1-88 is also untenable. The "verification" accompanying the petition clearly states the material dates, i.e., the date of receipt of the questioned decision, the date of filing of the motion for new trial and/or reconsideration, and the date of receipt of the order denying such motion.

Our conclusion is that the respondent Court of Appeals committed no error in sustaining the finding of the Regional Trial Court of Naga City that the document executed between Josefa Almeda and Asuncion Juanir Vda. de Alvarez was a deed of sale and not an equitable mortgage.

ACCORDINGLY, the petition is DENIED, with costs against the petitioner. It is so ordered.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records, pp. 1-3.

[2] Ibid., pp. 6-9.

[3] Thru Judge Roberto C. Rañola, Rollo, pp. 22-37.

[4] Ibid., pp. 84-91; Benipayo, J., ponente, with Camilon and Martin, JJ., concurring.

[5] Exh. "B," Original Record, p. 36.

[6] Exh. "1," Original Record, pp. 261-264.

[7] Exh. "A," Original Record, p. 35.

[8] Exh. "F," Original Record, p. 41.

[9] Exh. "G," Original Record, pp. 45-47.

[10] Exh. "I," Original Record, pp. 54-56.

[11] 31 C.J.S., pp. 1075-1076, 20 Am. Jur. 470.

[12] *Sons of de la Rama v. Benedicto*, 5 Phil. 512.

[13] TSN, September 25, 1989, p. 24-25.

[14] TSN, Ibid., pp. 27-28.

[15] Exh. "F," Original Record, p. 41.

[16] Exh. "2," Original Record, pp. 266-267.

[17] Tolentino, Arturo. *Commentaries and Jurisprudence on the Civil Code of the Philippines*. Vol. V (1992), pp. 156-158.

[18] 34 Phil. 100.

[19] TSN, September 25, 1989, pp. 28-29.

[20] Exh. "B," Original Record, p. 36.

[21] Exh. "C," Original Record,

[22] Exh. "D," Original Record, p. 38.

[23] Exh. "E," Original Record, p. 39.

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