

**ADORACION LUSTAN, PETITIONER, VS. COURT OF APPEALS,
NICOLAS PARANGAN AND SOLEDAD PARANGAN, PHILIPPINE
NATIONAL BANK, RESPONDENTS.***G.R. No. 111924. January 27, 1997*

Ponente: FRANCISCO, J.

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Petitioner Adoracion Lustan is the registered owner of a parcel of land otherwise known as Lot 8069 of the Cadastral Survey of Calinog, Iloilo containing an area of 10.0057 hectares and covered by TCT No. T-561. On February 25, 1969, petitioner leased the above described property to private respondent Nicolas Parangan for a term of ten (10) years and an annual rent of One Thousand (P1,000.00) Pesos. During the period of lease, Parangan was regularly extending loans in small amounts to petitioner to defray her daily expenses and to finance her daughter's education. On July 29, 1970, petitioner executed a Special Power of Attorney in favor of Parangan to secure an agricultural loan from private respondent Philippine National Bank (PNB) with the aforesaid lot as collateral. On February 18, 1972, a second Special Power of Attorney was executed by petitioner, by virtue of which, Parangan was able to secure four (4) additional loans, to wit: the sums of P24,000.00, P38,000.00, P38,600.00 and P25,000.00 on December 15, 1975, September 6, 1976, July 2, 1979 and June 2, 1980, respectively. The last three loans were without the knowledge of herein petitioner and all the proceeds therefrom were used by Parangan for his own benefit.[1] These encumbrances were duly annotated on the certificate of title. On April 16, 1973, petitioner signed a Deed of Pacto de Retro Sale[2] in favor of Parangan which was superseded by the Deed of Definite Sale[3] dated May 4, 1979 which petitioner signed upon Parangan's representation that the same merely evidences the loans extended by him unto the former.

For fear that her property might be prejudiced by the continued borrowing of Parangan, petitioner demanded the return of her certificate of title. Instead of complying with the request, Parangan asserted his rights over the property which allegedly had become his by virtue of the aforementioned Deed of Definite Sale. Under said document, petitioner conveyed the subject property and all the improvements thereon unto Parangan absolutely for and in consideration of the sum of Seventy Five Thousand (P75,000.00) Pesos.

Aggrieved, petitioner filed an action for cancellation of liens, quieting of title, recovery of possession and damages against Parangan and PNB in the Regional Trial Court of Iloilo City. After trial, the lower court rendered judgment, disposing as follows:

"WHEREFORE and in view of the foregoing, a decision is rendered as follows:

1. Ordering cancellation by the Register of Deeds of the Province of Iloilo, of the unauthorized loans, the liens and encumbrances appearing in the Transfer Certificate of Title No. T-561, especially entries nos. 286231; 338638; and 352794;
2. Declaring the Deed of Pacto de Retro Sale dated April 25, 1978 and the Deed of Definite Sale dated May 6, 1979, both documents executed by Adoracion Lustan in favor of Nicolas Parangan over Lot 8069 in TCT No.

T-561 of the Register of Deeds of Iloilo, as null and void, declaring the same to be Deeds of Equitable Mortgage;

3. Ordering defendant Nicolas Parangan to pay all the loans he secured from defendant PNB using thereto as security TCT No. T-561 of plaintiff and defendant PNB to return TCT No. T-561 to plaintiff;

4. Ordering defendant Nicolas Parangan to return possession of the land in question, Lot 8069 of the Calinog Cadastre described in TCT No. T-561 of the Register of Deeds of Iloilo, to plaintiff upon payment of the sum of P75,000.00 by plaintiff to defendant Parangan which payment by plaintiff must be made within ninety (90) days from receipt of this decision; otherwise, sale of the land will be ordered by the court to satisfy payment of the amount;

5. Ordering defendant Nicolas Parangan to pay plaintiff attorney's fees in the sum of P15,000.00 and to pay the costs of the suit.

SO ORDERED."[4]

Upon appeal to the Court of Appeals (CA), respondent court reversed the trial court's decision. Hence this petition contending that the CA committed the following errors:

"IN ARRIVING AT THE CONCLUSION THAT NONE OF THE CONDITIONS STATED IN ART. 1602 OF THE NEW CIVIL CODE HAS BEEN PROVEN TO EXIST BY PREPONDERANCE OF EVIDENCE:

IN CONCLUDING THAT PETITIONER SIGNED THE DEED OF SALE WITH KNOWLEDGE AS TO THE CONTENTS THEREOF;

IN ARRIVING AT THE CONCLUSION THAT THE TESTIMONY OF WITNESS DELIA CABIAL DESERVES FULL FAITH AND CREDIT;

IN FINDING THAT THE SPECIAL POWER OF ATTORNEY AUTHORIZING MORTGAGE FOR "UNLIMITED" LOANS AS RELEVANT."

Two main issues confront us in this case, to wit: whether or not the Deed of Definite Sale is in reality an equitable mortgage and whether or not petitioner's property is liable to PNB for the loans contracted by Parangan by virtue of the special power of attorney. The lower court and the CA arrived at different factual findings thus necessitating a review of the evidence on record.[5] After a thorough examination, we note some errors, both in fact and in law, committed by public respondent CA.

The court a quo ruled that the Deed of Definite Sale is in reality an equitable mortgage as it was shown beyond doubt that the intention of the parties was one of a loan secured by petitioner's land.[6] We agree.

A contract is perfected by mere consent.[7] More particularly, a contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[8] This meeting of the minds speaks of the intent of the parties in entering into the contract respecting the subject matter and the consideration thereof. If the words of the contract appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.[9] In the case at bench, the evidence is sufficient to warrant a finding that petitioner and Parangan merely intended to consolidate the former's indebtedness to the latter in a single instrument and to secure the same with the subject property. Even when a document appears on its face to be a sale, 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 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 the execution of the contract.[10]

Articles 1602 and 1604 of the Civil Code respectively provide:

"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 lessor 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 vendor binds himself to pay the taxes on the thing sold;
- 5) When the purchaser retains for himself a part of the purchase price;
- 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."

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

From a reading of the above-quoted provisions, for a presumption of an equitable mortgage to arise, we must first satisfy two requisites namely: that the parties entered into a contract denominated as a contract of sale and that their intention was to secure an existing debt by way of mortgage. Under Art. 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 Art. 1602 be present. The existence of any of the circumstances therein, not a concurrence nor an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract is an equitable mortgage.[11]

Art. 1602, (6), in relation to Art 1604 provides that a contract of sale is presumed to be an equitable mortgage 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. That the case clearly falls under this category can be inferred from the circumstances surrounding the transaction as herein set forth:

Petitioner had no knowledge that the contract[12] she signed is a deed of sale. The contents of the same were not read nor explained to her so that she may intelligibly formulate in her mind the consequences of her conduct and the nature of the rights she was ceding in favor of Parangan. Petitioner is illiterate and her condition constrained her to merely rely on Parangan's assurance that the contract only evidences her indebtedness to the latter. When one of the contracting parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former.[13] Settled is the rule that where a party to a contract is illiterate or cannot read or cannot understand the language in which the contract is written, the burden is on the party interested in enforcing the contract to prove that the terms thereof are fully explained to the former in a language understood by him.[14] To our mind, this burden has not been satisfactorily discharged.

We do not find the testimony of Parangan and Delia Cabial that the contract was duly read and explained to petitioner worthy of credit. The assessment by the trial court of the credibility of witnesses is entitled to great respect and weight for having had the opportunity of observing the conduct and demeanor of the witnesses while testifying.[15] The lower court may not have categorically declared Cabial's testimony as doubtful but this fact is readily apparent when it ruled on the basis of petitioner's evidence in total disregard of the positive testimony on Parangan's side. We have subjected the records to a thorough examination, and a reading of the transcript of stenographic notes would bear out that the court a quo is correct in its assessment. The CA committed a reversible error when it relied on the testimony of Cabial in upholding the validity of the Deed of Definite Sale. For one,

there are noted major contradictions between the testimonies of Cabial and Judge Lebaquin, who notarized the purported Deed of Definite Sale. While the former testified that receipts were presented before Judge Lebaquin, who in turn made an accounting to determine the price of the land[16], the latter categorically denied the allegation.[17] This contradiction casts doubt on the credibility of Cabial as it is ostensible that her version of the story is concocted.

On the other hand, petitioner's witness Celso Pamplona, testified that the contract was not read nor explained to petitioner. We believe that this witness gave a more accurate account of the circumstances surrounding the transaction. He has no motive to prevaricate or concoct a story as he witnessed the execution of the document at the behest of Parangan himself who, at the outset, informed him that he will witness a document consolidating petitioner's debts. He thus testified:

Q: In (sic) May 4, 1979, you remember having went (sic) to the Municipality of Calinog?

A: Yes, sir.

Q: Who invited you to go there?

A: Parangan.

Q: You mean Nicolas Parangan?

A: Yes, sir.

Q: What did Nicolas tell you why he invited you to go there?

A: He told me that I will witness on the indebtedness of Adoracion to Parangan.

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Q: Before Adoracion Lustan signed her name in this Exh. "4", was this document read to her?

A: No, sir.

Q: Did Nicolas Parangan right in that very room tell Adoracion what she was signing?

A: No, sir.

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Q: What did you have in mind when you were signing this document, Exh. "4"?

A: To show that Adoracion Lustan has debts with Nicolas Parangan."[18]

Furthermore, we note the absence of any question propounded to Judge Lebaquin to establish that the deed of sale was read and explained by him to petitioner. When asked if witness has any knowledge whether petitioner knows how to read or write, he answered in the negative.[19] This latter admission impresses upon us that the contract was not at all read or explained to petitioner for had he known that petitioner is illiterate, his assistance would not have been necessary.

The foregoing squares with the sixth instance when a presumption of equitable mortgage prevails. The contract of definite sale, where petitioner purportedly ceded all her rights to the subject lot in favor of Parangan, did not embody the true intention of the parties. The evidence speaks clearly of the nature of the agreement — it was one executed to secure some loans.

Anent the issue of whether the outstanding mortgages on the subject property can be enforced against petitioner, we rule in the affirmative.

Third persons who are not parties to a loan may secure the latter by pledging or mortgaging their own property.[20] So long as valid consent was given, the fact that the loans were solely for the benefit of Parangan

would not invalidate the mortgage with respect to petitioner's property. In consenting thereto, even granting that petitioner may not be assuming personal liability for the debt, her property shall nevertheless secure and respond for the performance of the principal obligation.[21] It is admitted that petitioner is the owner of the parcel of land mortgaged to PNB on five (5) occasions by virtue of the Special Powers of Attorney executed by petitioner in favor of Parangan. Petitioner argues that the last three mortgages were void for lack of authority. She totally failed to consider that said Special Powers of Attorney are a continuing one and absent a valid revocation duly furnished to the mortgagee, the same continues to have force and effect as against third persons who had no knowledge of such lack of authority. Article 1921 of the Civil Code provides:

"Art. 1921. If the agency has been entrusted for the purpose of contracting with specified persons, its revocation shall not prejudice the latter if they were not given notice thereof."

The Special Power of Attorney executed by petitioner in favor of Parangan duly authorized the latter to represent and act on behalf of the former. Having done so, petitioner clothed Parangan with authority to deal with PNB on her behalf and in the absence of any proof that the bank had knowledge that the last three loans were without the express authority of petitioner, it cannot be prejudiced thereby. As far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority if such is within the terms of the power of attorney as written even if the agent has in fact exceeded the limits of his authority according to the understanding between the principal and the agent.[22] The Special Power of Attorney particularly provides that the same is good not only for the principal loan but also for subsequent commercial, industrial, agricultural loan or credit accommodation that the attorney-in-fact may obtain and until the power of attorney is revoked in a public instrument and a copy of which is furnished to PNB.[23] Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers (Article 1911, Civil Code).[24] The mortgage directly and immediately subjects the property upon which it is imposed.[25] The property of third persons which has been expressly mortgaged to guarantee an obligation to which the said persons are foreign, is directly and jointly liable for the fulfillment thereof; it is therefore subject to execution and sale for the purpose of paying the amount of the debt for which it is liable.[26] However, petitioner has an unquestionable right to demand proportional indemnification from Parangan with respect to the sum paid to PNB from the proceeds of the sale of her property[27] in case the same is sold to satisfy the unpaid debts.

WHEREFORE, premises considered, the judgment of the lower court is hereby REINSTATED with the following MODIFICATIONS:

1. DECLARING THE DEED OF DEFINITE SALE AS AN EQUITABLE MORTGAGE;
 2. ORDERING PRIVATE RESPONDENT NICOLAS PARANGAN TO RETURN THE POSSESSION OF THE SUBJECT LAND UNTO PETITIONER UPON THE LATTER'S PAYMENT OF THE SUM OF P75,000.00 WITHIN NINETY (90) DAYS FROM RECEIPT OF THIS DECISION;
 3. DECLARING THE MORTGAGES IN FAVOR OF PNB AS VALID AND SUBSISTING AND MAY THEREFORE BE SUBJECTED TO EXECUTION SALE.
 4. ORDERING PRIVATE RESPONDENT PARANGAN TO PAY PETITIONER THE AMOUNT OF P15,000.00 BY WAY OF ATTORNEY'S FEES AND TO PAY THE COSTS OF THE SUIT.
- SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] TSN, dated February 18, 1991, p. 35.

- [2] Annex B; Records, p. 40.
- [3] Annex E; Records, p. 43.
- [4] Decision, dated July 3, 1991, pp. 14-15; Rollo pp. 60-61.
- [5] Gaw vs. IAC, 220 SCRA 405.
- [6] Decision, dated July 3, 1991 p. 12; Rollo, p. 58.
- [7] Art. 1315, Civil Code.
- [8] Art. 1475, Civil Code.
- [9] Art. 1370, Civil Code, second paragraph.
- [10] Olea vs. CA. 247 SCRA 274.
- [11] Uy vs. CA, 230 SCRA 664.
- [12] Annex E; Records, p. 43.
- [13] Art. 1332, Civil Code.
- [14] Cayabyab vs. IAC, G.R. No. 75120, April 28, 1994.
- [15] People vs. Rosales, 224 SCRA 45.
- [16] TSN, dated February 22, 1991 p. 9.
- [17] TSN, dated February 26, 1991 p. 6.
- [18] TSN, dated February 6, 1991 pp. 11-13.
- [19] TSN, dated February 26, 1991 p. 8.
- [20] Art. 2085, Civil Code.
- [21] GSIS vs. CA, 170 SCRA 533.
- [22] Eugenio vs. CA, 239 SCRA 207.
- [23] Special Power of Attorney; Records, p. 80.
- [24] Cuison vs. CA, 227 SCRA 391.
- [25] Art. 2126, Civil Code.
- [26] See Lack vs. Alfonso, 14 Phil. 630.
- [27] Ibid.

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