

REBECCA DESAMITO VDA. DE ALCANTARA, GERONDINA ALCANTARA, RENATO D. ALCANTARA, GIL D. ALCANTARA, ERNESTO D. ALCANTARA, JR., REBECCA ROWENA D. ALCANTARA, AND ERIC D. ALCANTARA, PE...

G.R. No. 114762. January 29, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners seek the reversal of the decision of the Court of Appeals in CA-G.R. CV No. 28240,[1] which affirmed the decision of Branch 118 of the Regional Trial Court of Pasay City in Civil Case No. 2881-P save as to the award of attorney's fees, which was deleted for lack of basis.[2] The dispositive portion of the trial court's decision reads as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiffs and as [sic] against the defendants and the intervenors:

- (1) Declaring the Pacto-de-Retro Sale dated September 7, 1983 to be a real Sale Con Facto de Retro;
- (2) Declaring the plaintiffs as one-half co-owners of Lots 4399 and 4400 of the Cadastral Survey of Pasay City and covered by Transfer Certificate of Title No. T-19232 formerly belonging to Leona C. vda. de Alfonso together with all the improvements thereon;
- (3) Ordering the parties herein to partition the said two lots with one-half belonging to the plaintiffs and the other half belonging to the defendants and intervenors, and to share equally in the expenses thereof;
- (4) To reimburse plaintiffs one-half of the income of the property derived from the properties in question and received by the defendants beginning September 7, 1983;
- (5) Ordering defendants and intervenors to pay the plaintiffs the sum of P5,000.00 as attorney's fees; and
- (6) Costs of the suit.

SO ORDERED.

Civil Case No. 2881-P is an action filed by the private respondents for specific performance concerning Lots Nos. 4399 and 4400 covered by Transfer Certificate of Title (TCT) No. 19232.[3] Petitioners Rebecca Desamito vda. de Alcantara and Gerondina Alcantara were the defendants and the rest of the petitioners were the intervenors therein.

The factual antecedent as summarized in the decision in the said case and adopted by the Court of Appeals in its challenged decision are as follows:

The main material facts of the case are almost undisputed. From the evidences presented, it appears that the two (2) lots is covered by Transfer Certificate of Title No. 19232 (Exh. "A") and registered in the names of

Leona C. vda. de Alfonso, one-half (1/2), and Ernesto Alcantara married to Rebecca Desamito, and Gerondina Alcantara, one-half (1/2) issued on May 6, 1975. This title was derived from Transfer Certificate of Title No. (38601) 4821 registered in the name of Leona C. vda. de Alfonso and Dolores Cifra, the latter being the predecessor-in-interest of the defendants. Plaintiffs are claiming ownership over 1/2 undivided portion of the two lots covered by the subject title by virtue of a Facto de Retro Sale (Exh. "B") executed in their favor by Leona C. vda. de Alfonso sometime on September 7, 1983, for a consideration of One Hundred Thousand Pesos (P100,000.00) and which said Vendor-a-retro failed to redeem within the three (3) month period provided for. Defendants and the intervenors, on the other hand, traversed and assailed plaintiffs' ownership by saying that the sale con pacto de retro is null and void because at the time it was executed, Leona C. vda. de Alfonso, the vendor-a-retro, was no longer the owner of the 1/2 portion of the lots as the same had already been transferred by her in a document entitled, "Deed of Extra-Judicial Partition" of the estates of Dolores, Simeona and Eladia, all surnamed Cifra, and Deed of Partition of Co-ownership of property (Exhs. "7" & "7-L-1") dated March 13, 1972. While there appears some minor consequential issues, and as agreed upon by the parties during the pre-trial conference, the main issue involved in this action is, "Who has a better right of the title over the 1/2 undivided portion of the two lots covered by Transfer Certificate of Title No. 19232 and which is the subject matter of the pacto de retro sale?"

Another material issue that was brought out during the trial and from the pleadings filed is the question on whether or not the sale with the right to repurchase is an equitable mortgage.

Plaintiffs' evidence are simple to the effect that before September 7, 1983 Leona C. vda. de Alfonso accompanied by "anak-anakan" (adopted son) approached the plaintiffs and offered to sell her share in the lots in question; that the lots at that time were mortgaged to a certain Jovita Javate; that after some negotiations, on September 7, 1983, Leona C. vda. de Alfonso, and her adopted son, Raul Darangdanao, brought the plaintiffs and Adelaida Santiago, wife of Roberto Santiago to the office of her lawyer, Atty. Julio Francisco, near the boundary of Pasay and Makati, Metro Manila, where the deed of sale with the right to repurchase was prepared, executed, signed and notarized and the consideration of P100,000.00 for such sale was paid; that it was also at this time and place where the Cancellation of Mortgage (Exh. "B-1") was executed; that Leona C. vda. de Alfonso delivered the original of the owner's duplicate of Transfer Certificate of Title No. 19232 to the plaintiffs after the three (3) months repurchase period expired without the vendor-a-retro having exercised the same; that plaintiffs gave Leona C. vda. de Alfonso some extensions of time to exercise the repurchase but to no avail prompting them to see Gerondina Alcantara and Rebecca Desamito at the latter's residence in order to partition the properties, they being the co-owners thereof; that on several conferences and meetings, plaintiffs and defendants agreed to partition the property except that Rebecca Desamito begged for time in order to wait a son who was then coming from the United States of America; that nonetheless, pursuant to the agreement, a survey was taken to subdivide the properties with both parties herein sharing equally in the expenses; that as a result of the survey by Geodetic Engineer Ponciano Miranda a Subdivision Plan was prepared (Exh. "C"); that later on, for unknown reasons, defendants backed out and so, they had to file this case.

Defendants and the intervenors, on the other hand, in their common defense, only admitted the existence of the sale con pacto de retro but not as to its contents and genuineness for lack of knowledge thereof. They admitted, however, that the plaintiffs went to see them after the death of Leona C. vda. de Alfonso and had a meeting about the sale with right to repurchase. Leona C. vda. de Alfonso executed in their favor [a deed of sale] over the one-half (1/2) undivided portion of the two lots covered by Transfer Certificate of Title No. 19232 and the failure of Leona C. vda. de Alfonso to exercise the right to repurchase which had already expired [sic]. During the several meetings, the plaintiffs offered defendants to repurchase the property to which they did not agree because the one-half portion of the lots formerly owned by Leona C. vda. de Alfonso was already transferred to them by her sometime in the year 1975, as contained in the Deed of Extra-Judicial Partition (Exhs. "7" & "7-L-1"); that said Deed of Extra-Judicial Partition was re-registered with the Register of Deeds of Pasay City on November 23, 1983 (Exh. "N-1"), published with the Philippine Evening Express in three (3) consecutive

weekly issues (Exh. "11"), but no certificate of title was issued to effect the said alleged sale.

The defendants and the intervenors further asserted the alleged sale with right to repurchase is in reality a mortgage, as a matter of fact, they claim that they have been and still are in possession of the properties and the improvements thereon, personally or thru their tenants or lessees, who have been paying rentals to them.[4]

The trial court held that the sale executed by Leona C. vda. de Alfonso over her share in the subject properties in favor of the private respondents was a real sale con pacto de retro. Thus:

While Article 1602 of the New Civil Code enumerates as a circumstance which may lead to consider a contract of sale as an equitable mortgage, a situation when the vendor remains in possession as lessees or otherwise on the property sold, such cannot be taken of any value in this present action considering the peculiar fact that the vendor-a-retro was never in possession of the property at all before, during or after the sale. Moreover, plaintiffs were able to explain the little delay in their demands to gain possession of the property because of the period they gave the vendor-a-retro to repurchase the property. But the hard facts established by evidence show that plaintiffs demanded for their share of the property from the defendants after sensing that the repurchase will no longer be exercised. The admitted conferences and meetings between the parties herein connote plaintiffs' desire to get what is due them. There is no denying that the Subdivision Plan (Exh. "C") was a result of those conferences, to subdivide the lots between the plaintiffs on one hand and the defendants and intervenors on the other. No ordinary person will proceed to hire a surveyor, and come out with a subdivision plan without any prior understanding with the other co-owners. Withering out all contrary insinuations and assumptions the contract in question is for all legal intents and purposes, a real pacto de retro sale and not an equitable mortgage.[5]

On the issue of the preference of the Facto de Retro Sale over the Deed of Extrajudicial Partition, the trial court found:

Finally, the only remaining question to be resolved in this action is the claim of the defendants and intervenors that an unregistered pacto de retro sale cannot prevail over a duly recorded partition agreement. Admittedly, the pacto de retro sale was registered only on October 27, 1987, while the Partition Agreement (Exh. "7") was registered much earlier on November 16, 1983 (Exh. "10-N-1"). These facts, however, do not reveal the real issue involved because it would appear in a more simpler way that the question should be: Was there a valid registration of the alleged sale in favor of the defendants and intervenors by Leona C. vda. de Alfonso of her 1/2 undivided share over the two lots under our existing Land Registration Law?

In case of a piece of land titled under the torrens system, it is the act of registration that transfers ownership of the land sold (GSIS vs. CA, G.R. No. 42278, Jan. 20, 1989). It is the act that operates to convey registered land and affect title thereto and creates constructive notice to the whole world.

Under Section 57 of P.D. 1529, or the Property Registration Decree, an owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. This registration in order to effect a constructive notice under Section 52 of the same law must be accompanied with the surrender of the transfer certificate of title covering the lot sold and the payment of the prescribed registration fees (Villasar vs. Camon, 89 Phil. 404). In accordance with these principles in land registration, it cannot be said that the registration of the Deed of Partition (Exh. "7") which only mentions of the Deed of Sale allegedly executed by Leona C. vda. de Alfonso in favor of the defendants and the intervenors over her 1/2 share in the properties in question, is not at all registration of such sale, in its strict legal sense. The registration of the partition agreement is valid only insofar as such partition is concerned but not in any way to transcend the effect of its registration in favor of the alleged sale mentioned therein. In the first place, the registrant did not present the document of sale itself as required by law, neither was the transfer certificate of title covering the lots to be sold surrendered, nor the registration fees paid therefor. From all indications, said Deed of Sale (Exh. "7-Z-1") which was not presented in evidence in this case, was not altogether entered in the Primary Book of

the Register of Deeds of Pasay City. In fine, no registration was had of the said Deed of Sale. Plaintiffs' evidence, conversely preponderantly proved that they are in good faith when they entered into the sale con pacto de retro. No evidence was ever presented to allege fraud, force or intimidation in the execution thereof nor of plaintiffs' prior knowledge of the alleged sale made by the vendor-a-retro in favor of the defendants or intervenors. The title surrendered to them was in the name of the vendor-a-retro, clean of any sale whatsoever. In the case of *Davao Grains, Inc. vs. IAC*, G.R. No. 78209, Mar. 31, 1989, the Supreme Court said:

"Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the cancellation of the certificate. Every person dealing with registered lands may safely rely on the correctness of the certificates of title issued therefor and the Law will in no way oblige him to go behind the certificate to determine the condition of the property." [6]

In their appeal to the Court of Appeals, the petitioners asserted that the trial court erred in (a) not declaring that the property subject of the pacto de retro sale is a mere collateral in a loan transaction and that the vendees-a-retro's rights and interests are in the payment of the loan secured thereby and not in the subject property; (b) not declaring the pacto de retro sale as void since Leona C. vda. de Alfonso was without absolute ownership over the subject property; (c) not declaring that an unrecorded equitable mortgage purporting to be a pacto de retro sale cannot prevail over an unregistered sale and a duly recorded partition agreement; (d) not declaring the pacto de retro sale as an equitable mortgage; (e) not declaring the petitioners to be entitled to have their title quieted and to be paid damages; (f) ordering them to reimburse the private respondents one-half of the income derived from the subject property; and (g) awarding attorney's fees in favor of the private respondents.

As stated in the beginning, the Court of Appeals affirmed the decision of the trial court save for the award of attorney's fees, which it deleted for lack of basis. It found the questioned pacto de retro sale clear and unambiguous and that there is at all no doubt that the intention of the parties was really to enter into a contract of sale with right of repurchase. Not one of the badges of equitable mortgage under Article 1602 of the Civil Code is present. First, there is no evidence that the purchase price of P100,000.00 is grossly inadequate. Second, the vendor-a-retro did not remain in possession of the property. Third, no instrument extending the period of redemption was executed. Fourth, the vendees-a-retro (the private respondents) did not retain any part of the consideration. Finally, the document does not state that the vendor-a-retro will continue to pay the realty taxes which, on the contrary, were paid by the vendees-a-retro.

The Court of Appeals likewise ruled that the failure on the part of the private respondents to file a petition for the consolidation of their ownership over the property is not fatal to the case considering that the failure on the part of the vendor-a-retro to repurchase the property within the specified period vests upon the private respondents absolute title and ownership over the property. [7]

As to the preference of the pacto de retro sale over the extrajudicial partition, the Court of Appeals adopted the findings of the trial court.

Still unsatisfied, the petitioners filed the instant petition wherein they claim that the Court of Appeals erred in (a) declaring that the pacto de retro sale prevails over the deed of extrajudicial partition despite the fact that the latter was executed and registered earlier than the former; (b) not declaring the pacto de retro sale as a mere equitable mortgage; and (c) ordering the petitioners to reimburse one-half (1/2) of the income received from the property. [8]

The first assigned error is without merit. While the Deed of Extrajudicial Partition was registered ahead of the Facto de Retro Sale, it did not, however, rise to the level of a valid instrument of conveyance of the one-half share of Leona C. vda. de Alfonso in the subject property in favor of Ernesto Alcantara and Gerondina Alcantara, since

it merely mentions of an alleged "sale executed by Leona C. vda. de Alfonso on March 13, 1972 (Doc. No. 292, Page 71, Book X, Series of 1972 of Notary Public for Manila, Mr. Benjamin T. de Peralta." [9] The said deed of sale was never offered in evidence by the petitioners. If it really existed, no impediment could have prevented its offer as evidence especially considering that it was allegedly acknowledged before the same notary public who notarized the Deed of Extrajudicial Partition. There is, as well, no proof that it was registered. TCT No. 19232 bears no annotation of the sale.

Without the production of the alleged deed of sale, the registration of the Deed of Extrajudicial Partition was an idle ceremony or an exercise in futility insofar as the transfer of Leona C. vda. de Alfonso's ownership is concerned. Such registration did not operate as a registration of the deed of sale. Insofar as third persons are concerned, what could validly transfer or convey Leona C. vda. de Alfonso's share in the property to Ernesto Alcantara and Gerondina Alcantara is the registration of the deed of sale and not of the Deed of Extrajudicial Partition which only mentions the former. [10] The trial court and the Court of Appeals correctly resolved this issue against the petitioners.

It also bears stressing that although the Deed of Extrajudicial Partition was executed on 22 January 1974, it was not registered until 16 November 1983, or two months after the execution of the Facto de Retro Sale in favor of the private respondents. [11] Moreover, although that deed was registered, no corresponding annotation thereof was made in TCT No. 19232. The two annotations thereon refer to the extrajudicial settlement of the estate of the deceased spouses Tomas Alcantara and Dolores Cifra, inscribed on 6 May 1975, [12] and to the Facto de Retro Sale in favor of the private respondents, inscribed on 27 October 1987. [13] Then too, nothing in the decisions of both the trial court and the Court of Appeals indicate that the petitioners rebutted the evidence of the private respondents that Leona C. vda. de Alfonso was in possession of the owner's duplicate copy of TCT No. 19232 and that she delivered it to the private respondents after the expiration of the repurchase period.

Good faith or bad faith in the registration of the Pacto de Retro Sale for purposes of determining who has the better right to the property pursuant to Article 1544 of the Civil Code has become irrelevant because the petitioners never presented in evidence the deed of sale purportedly executed by Leona C. vda. de Alfonso in their favor. Article 1544 applies only when there are at least two deeds of sale over the same property. It provides as follows:

ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be a movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

The second assigned error involves the findings of fact of the Court of Appeals. The general rule is that the jurisdiction of this Court in cases brought before it from the Court of Appeals is limited to reviewing errors of law, since the findings of fact of the latter are conclusive. [14] The recognized exceptions to the rule are the following: (1) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly absurd; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of facts are conflicting; and (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both the appellant and the appellee. [15]

The petitioners have failed to convince us that any of the above exceptions apply to this case.

The third assigned error is equally without merit. Since it is based on the premise that what was sold by Leona C. vda. de Alfonso was her one-half pro-indiviso share in the property, it necessarily follows that she too was the pro-indiviso owner of one-half of its income. The private respondents succeeded to her rights upon the execution of the pacto de retro sale. However, the petitioners' obligation to account for and deliver to the private respondents their share in the income as successors-in-interest of Leona C. vda. de Alfonso cannot retroact to the execution of the pacto de retro sale on 7 September 1983, as ruled by the Court of Appeals, but only from the date demand therefor was made,[16] i.e., upon the filing of the Amended Complaint on 26 September 1985.[17] We note, further, that in the said Amended Complaint the private respondents allege:

10. That after the plaintiffs implemented and effected the surveying, preparation of the subdivision plan and expecting that the income being realized from the rentals would be applied in payment of the back taxes of the property under the agreement with herein defendants, the plaintiffs demanded that defendants comply with their agreement, but despite repeated demands to comply, defendants failed and refused and still fail and refuse to comply with the just and valid demands of the plaintiffs....

They then pray, among other things, that the court

(b) Order the defendants to pay and share equally in the expenses incurred by the plaintiffs, and also to apply all the income from the subject property in payment of all the back taxes. . . .

In short, the private respondents have agreed that whatever share they have in the income of the property would be applied to the back taxes. Moreover, the decisions of both the trial court and the Court of Appeals mention nothing of any evidence on the income of the property. It logically follows that the dispositive portion thereon has no basis. In any event, Article 500 of the Civil Code provides:

Art. 500. Upon partition, there shall be a mutual accounting for benefits received and reimbursements for expenses made. Likewise, each co-owner shall pay for damages caused by reason of his negligence or fraud.

WHEREFORE, the challenged decision of the Court of Appeals of 25 March 1994 in CA-G.R. CV No. 28240 is AFFIRMED subject to the modification concerning the award for reimbursement of one-half of the income of the property, which is hereby deleted for lack of basis, without prejudice, however, to the application of Article 500 of the Civil Code at the appropriate time.

No pronouncement as to costs.

SO ORDERED.

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

[1] Annex "A" of Petition; Rollo, 21-32. Per Yñares-Santiago, C., J., with Herrera, O., and Ibay-Somera, C., JJ., concurring.

[2] Rollo of CA-G.R. CV No. 28240, 10-19. Per Judge, now Associate Justice of the Court of Appeals, Conrado M. Vasquez, Jr.

[3] Exhibit "A"; Original Records (OR), 251.

[4] OR, 382-3 84; Rollo, 23-25.

[5] OR, 386.

[6] OR, 388-389.

[7] Citing *De Guzman vs. Court of Appeals*, 156 SCRA 701 [1987]

[8] *Rollo*, 13.

[9] Exhibit "7"; OR, 132 et seq.

[10] Section 51, P.D. No. 1529 (Amending and Codifying the Laws Relative to Registration of Property and For Other Purposes). See also Section 50, Act No. 496 (The Land Registration Act).

[11] It was executed on 7 September 1983.

[12] Exhibit "A-1"; OR, 251 (back page).

[13] Exhibit "A-2", *Id.*

[14] *Chan vs. Court of Appeals*, 33 SCRA 737 [1970].

[15] *Remalante vs. Tibe*, 158 SCRA 138 [1988]; *Medina vs. Asistio, Jr.*, 191 SCRA 218 [1990].

[16] Article 1169, Civil Code.

[17] OR, 26-29.

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