CHING SEN BEN, MARRIED TO CRISTINA TAN SIONG, PETITIONER, VS. COURT OF APPEALS, AND DAVID VICENTE, MARRIED TO ESTELITA M. VICENTE, RESPONDENTS.

G.R. No. 124355. September 21, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] affirming the dismissal by the Regional Trial Court, Branch 166, of Pasig City, of a petition for consolidation of title filed by petitioner Ching Sen Ben against private respondent David Vicente.

The facts are stated in the following portion of the decision of the Court of Appeals:[2]

> The Appellant [herein petitioner Ching Sen Ben] was engaged in the business of constructing houses on lots owned by him and selling the same to buyers who pay [for] the same with the proceeds of the housing loans from financing institutions like the Social Security System [SSS]. The Appellant and the Appellee [herein private respondent David Vicente] agreed that the Appellant will construct a house on Appellant's lot located in Bayan-bayanan, Marikina, Metro Manila, with an area of ninety (90) square meters described in Transfer Certificate of Title No. 128394 of the Registry of Deeds of Marikina and transfer the same [to] the Appellee at the total price of P150,000.00 to be paid by the Appellee from the proceeds of the housing loan of the latter from the SSS. The Appellee filed an application for a housing loan with the SSS in the amount of P150,000.00 payable in twenty-five (25) years in monthly installment, compounded monthly. The application of the Appellee was approved by the SSS but only for the amount of P119,400.00. Nevertheless, on March 24, 1998, Appellant executed a "Deed of Absolute Sale" over the aforesaid parcel of land in favor of the Appellee. On the basis of said deed, Transfer Certificate of Title No. 146078 was issued to Appellee under his name. The Appellant informed the Appellee that the balance of his account for the purchase of the house and lot was P43,000.00.
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> The Appellee executed a "Promissory Note" in favor of the SSS. And, to secure the payment of said loan, the Appellee executed a "Deed of Real Estate Mortgage" in favor of the SSS covering the aforesaid lot including existing improvements thereon and the house that will be constructed thereon. One of the essential conditions of the deed was that the Appellee cannot mortgage, sell, or dispose of the property mortgaged without the prior consent of the SSS and if the appellee did, the SSS may foreclose the mortgage, judicially or extrajudicially. The proceeds of the loan were remitted to the Appellant by the Appellee in partial payment of the aforesaid house and lot. The Appellant did construct the house on the lot as agreed upon. On April 4, 1988, the Appellant sent to the Appellee a statement of the latter's account showing a balance of P43,000.00 still due from the Appellee. However, the Appellee failed to pay the aforesaid debt. The Appellant and the Appellee executed on September 21, 1988, a "Deed of Sale With Assumption [of Mortgage] and With Right to Repurchase" wherein they agreed:
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> "That, for and in consideration of the sum of SIXTY THOUSAND TWO HUNDRED FORTY TWO PESOS AND EIGHTY SIX CENTAVOS (P60,242.86), Philippine Currency, receipt of which is hereby duly

> acknowledged by the VENDOR [herein private respondent David Vicente], said VENDOR does hereby SELL, CEDE, TRANSFER and CONVEY, unto the said VENDEE [herein petitioner Ching Sen Ben], his heirs, successors and assigns, the above-mentioned property together with all the improvements found therein;
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> That, the said property is mortgaged by the VENDOR in favor of S.S.S. as evidenced by a Deed of Mortgage executed on March 24, 1988 by and between the said VENDOR and S.S.S.
>
> That, as part of the consideration of this sale, the VENDEE agrees to assume, as [he] hereby assumed, all the duties and obligations of the VENDOR imposed upon by the latter in the aforementioned deed of mortgage, as if the present VENDEE were the mortgagor in said mortgaged deed;
>
> That, the VENDOR agrees to pay a monthly interest of P800.00 to commence on Oct. 30, 1988 during the execution of this contract;
>
> That the VENDOR, reserves unto himself all the right to redeem and the VENDEE in turn obligates himself to resell and reconvey the property herein being sold within a period of ONE (1) YEAR counted from the date hereof, for the amount of P69,842.00, PROVIDED, HOWEVER, that if the vendor shall fail to exercise his rights to redeem as herein granted, within a period herein stipulated then this conveyance shall [be] deemed to be an absolute and irrevocable sale, without the necessity of executing any further deed [to] vest title in the VENDEE."
>
> However, the Appellee remained in possession of the property. On January 13, 1990, the Appellant sent a letter to the Appellee demanding the payment of his account on his transaction with Appellant. The Appellee failed to pay as demanded by the Appellant. Forthwith, on February 5, 1990, the Appellant paid, in full, to the SSS, the account of the Appellee, in the amount of P144,917.06, in the form of a check and the cash amount of P293.69 for which the Appellant was issued "Real Estate Loan Payment Return". The SSS executed, on February 28, 1990, a "Release of Real Estate Mortgage" which deed was annotated at the dorsal portion of Transfer Certificate of Title No. 146078 under the name of the Appellee. On March 10, 1990, the Appellant, through counsel, sent a letter to the Appellee demanding that the Appellee execute a "Deed of Absolute Sale" over the property. The [Appellee] did not heed [Appellant's] demand. On May 16, 1990, the Appellant executed an "Affidavit of Consolidation of Ownership." On July 10, 1990, the Appellant filed with the Court a quo a Petition, in LRC Case No. R-4309, for the consolidation of his title to the property.
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> After due proceedings, the Court a quo rendered judgment, dated May 13, 1993, the decretal portion of which reads as follows:
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> WHEREFORE, judgment is hereby rendered dismissing the petition for lack of merit and ordering petitioner (Ching Sen Ben) to pay respondent (David Vicente) P5,000.00 as attorney's fees, plus the cost of suit.

On appeal, the Court of Appeals affirmed the trial court's decision. The appellate court ruled that the deed of sale with assumption of mortgage and right to repurchase entered into by the parties is actually an equitable mortgage considering that private respondent David Vicente remained in possession of the subject property even after the execution of the said deed of sale, but petitioner, as the mortgagee, cannot seek the foreclosure of the mortgage in a petition for consolidation of title under Rule 64. Hence, this petition for review on certiorari. Petitioner contends that the appellate court erred[3]-

> I
> IN NOT ORDERING FORECLOSURE, THE RESPONDENT, THE COURT OF APPEALS, HAS DECIDED A QUESTION OF SUBSTANCE, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW, THAT LAW BEING THE LAW, AMONG OTHER THINGS, AGAINST UNJUST ENRICHMENT, OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.
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> II

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> IN HOLDING THAT THE TRANSACTION BETWEEN THE PARTIES WAS A[N] EQUITABLE MORTGAGE, THE RESPONDENT, THE COURT OF APPEALS, HAS DECIDED A QUESTION OF SUBSTANCE, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.

The Court finds the foregoing contentions to be without merit.

First. In the determination of a contract's real nature, courts are not bound by the parties' denomination of the same. The decisive factor is the intention of the parties, as shown by the parties' contemporaneous acts at the time of the execution of the said contract and their acts subsequent thereto.[4] Even though a contract is denominated a pacto de retro sale, the owner of the property may prove that it is otherwise by showing, by means of parol evidence, the true intent of the parties.[5]

Article 1602 of the Civil Code enumerates the instances when a contract will be presumed to be an equitable mortgage, to wit:

> 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 case, any money, fruits, or other benefit to be received by the vendees as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

Art. 1603 of the Code provides that, in case of doubt, a contract purporting to be a sale with right to repurchase should be considered an equitable mortgage. The policy of the law is to discourage pacto de retro sales and thereby prevent the circumvention of the prohibition against usury and pactum commissorium. This Court has taken judicial notice of the fact that pacto de retro sales have been frequently used to conceal contracts of loan secured by a mortgage. The provisions of the Civil Code, which consider certain types of sales as equitable mortgages, are intended for the protection of those who are the unlettered and who are penurious vis-a-vis their creditors.[6]

In the instant case, we hold that the deed of sale with assumption of mortgage and right to repurchase is actually an equitable mortgage. For one, the purported consideration for the sale with right to repurchase in the amount of P60,242.86 is unusually inadequate compared to the purchase price (150,000.00) of the property when private respondent bought it from petitioner only six (6) months before the execution of the said deed of sale. For another, private respondent, the supposed vendor, remained in possession of the property even after the execution of the deed. Not only did private respondent retain possession of the subject property, he also retained ownership thereof which was the reason petitioner had to bring an action for consolidation of title against private respondent in the trial court. In a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him.[7] Indeed, as the Court of Appeals found, the real intention of the parties in this case was to secure the payment by private respondent of the balance of the purchase price and the transfer

fees in the total amount of P43,000.00.[8]

Petitioner cannot invoke the stipulation in the deed of sale with right to repurchase that absolute title shall be vested in the vendee in case the vendor failed to redeem the property on the specified date. Such stipulation is void for being a pactum commissorium.

Petitioner insists that the relation between the parties was that of "owner-builder-seller and buyer," not that of creditor and debtor. However, as the Court of Appeals held, while initially the relation of the parties was that of seller and buyer, when private respondent, as buyer, failed to pay the balance of the purchase price and the transfer fees in the amount of P43,000.00, the parties executed the deed of sale with right to repurchase in order to secure the payment of said balance, thus converting their relation to that of creditor and debtor. This fact belies petitioner's claim that there was no need for private respondent to execute a mortgage on the property because there was no loan or debt to be secured thereby. Indeed, private respondent was bound to pay petitioner interest at the rate of P800.00 per month, commencing October 30, 1988. If private respondent was not indebted to petitioner as the latter resolutely claims, there would have been no need for the former to pay interest. The obligation to pay interests implies the existence of a debt.

Petitioner argues that if the intention of the parties in executing the deed of sale with a right to repurchase was to secure the payment of the debt of private respondent, there would have been no reason for him to assume private respondent's mortgage obligations to the Social Security System (SSS). This argument has no merit. The fact that petitioner assumed the mortgage obligation of private respondent to the SSS does not detract from the real nature of the agreement as a contract of mortgage to secure the payment of a debt. By entering into a pacto de retro sale which is actually a contract of mortgage and assuming private respondent's obligation to the SSS, petitioner assured himself of the payment of private respondent's debt or the recovery of the subject property itself which petitioner can then resell at a higher price to other buyers. As the Court of Appeals said:[9]

> [I]f the Appellant assumed, as he did, Appellee's mortgage with the SSS, and paid the balance of the account with the System and secured a release of the mortgage, the Appellee would not be able to pay not only the balance of his account with Appellant but also the amount paid by the Appellant to the Social Security System amounting to P144,000.00 if the Appellant foreclosed Appellee's mortgage, with the Appellant thereby insuring the acquisition by the Appellant of Appellee's property and enabling Appellant to sell the said property to prospective buyers at much higher price than the price for which the Appellee purchased the same from the Appellant. Hence, the Appellant would be shooting two (2) birds with one stone, so to speak - collect the balance of Appellee's account and profit from Appellee's financial misery to boot. This is the apex of inequity.

Petitioner claims that he assumed the obligation of private respondent to the SSS with good motives. He claims that he "stuck his neck out" for private respondent in spending twice for the subject property for the latter's benefit, i.e., first, for the expenses of building the house, and second, for assuming the mortgage of the property to the SSS.

Petitioner's claim should be dismissed. As already stated, the assumption of mortgage obligation of private respondent to the SSS was done primarily for petitioner's own benefit. Contrary to petitioner's pretense, he did not really spend twice for the property. Private respondent remitted to petitioner the proceeds of the loan in the amount of P119,400.00, which the former obtained from the SSS, in partial payment for the subject property. When petitioner, therefore, assumed the former's obligation to the SSS by paying the latter P144,917.06, all he actually paid was P25,517.06. Adding this amount to private respondent's balance of the purchase price and transfer fees in the amount of P43,000.00 will result in the sum of P68,517.06. By spending P68,517.06, petitioner can recover the subject property which he previously sold to private respondent for P150,000.00, if the Court does

not intervene.

Second. Petitioner contends that since the deed of sale is an equitable mortgage, he is entitled as a matter of right, to the foreclosure of the same. On this issue, the Court of Appeals correctly held:[10]

> Anent the second issue posed by the Appellant, We find the same betise. Indeed, the Appellant did not in his Petition pray for the judicial foreclosure of the Appellee's mortgage in his favor. For another, a Petition for Consolidation of Title under Rule 64 of the Revised Rules of Court, although denominated a special civil action, should be filed in the land registration case. On the other hand, a Petition For Judicial Foreclosure Of Real Estate Mortgage should be filed under Rule 68 of the Revised Rules of Court, which is a special civil action independent of the land registration case.

Indeed, in Montevirgen v. Court of Appeals,[11] it was held that an action for consolidation of ownership of a parcel of land is not the appropriate remedy to enforce a transaction declared to be a mortgage because the mortgagee should foreclose the mortgage if he wishes to secure a title to the mortgaged property.

The award of attorney's fees in the amount of P5,000.00 in favor of private respondent is in order. Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party.[12] In this case, the trial court found that private respondent was compelled to engage the services of counsel and to incur expenses of litigation in order to protect his interest to the subject property against petitioner's unlawful designs. The award is reasonable in view of the time it has taken this case to be resolved.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, and Buena, JJ., concur.

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[1] Per Justice Romeo J. Callejo, Sr., and concurred in by Justices Antonio M. Martinez and Delilah Vidallon-Magtolis.

[2] Petition, pp. 2-3; Decision, pp. 2-4; Rollo, pp. 9-10 and 30-32.

[3] Petition, pp. 3-4; Rollo, pp. 10-11.

[4] Oronce v. Court of Appeals, G.R. No. 125766, October 19, 1998.

[5] Olea v. Court of Appeals, 247 SCRA 274 (1995).

[6] Matanguihan v. Court of Appeals, 275 SCRA 380 (1997).

[7] Adlawan v. Torres, 233 SCRA 645 (1994).

[8] The balance of the purchase price is P30,600.00 only, the rest are transfer fees (See Decision, p. 10, Rollo, p. 38).

[9] Decision, p. 12; Rollo, p. 40.

[10] Decision, p. 12; Rollo, p. 40.

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[11] 112 SCRA 641 (1982).

[12] Singson v. Court of Appeals, 282 SCRA 149 (1997); Brahm Industries, Inc. v. NLRC, 280 SCRA 828 (1997).

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