

**SPS. JOSE ROSARIO AND HERMINIA ROSARIO, PETITIONERS, VS.
COURT OF APPEALS, LOURDES VILLAHERMOSA, AIDA
VILLAHERMOSA, RODULFO VILLAHERMOSA, NATIVIDAD V.
CEBALLOS, AND JESUS VILLAH...**

G.R. No. 127005. July 19, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In this petition for review on certiorari, petitioners Spouses Jose and Herminia Rosario seek a reversal of the decision dated June 14, 1996 of the Court of Appeals[1] in CA-G.R. CV No.-36311 entitled Spouses Jose C. Rosario and Herminia L. Rosario vs. Lourdes L. Villahermosa, et al . which reversed the decision of the Regional Trial Court of Cebu in Civil Case No. R-20861.

On August 25, 1981, Spouses Jose C. Rosario and Herminia Lariosa-Rosario (petitioners herein) filed an action for legal redemption with damages and attorney's fees against Lourdes, Aida, Rodulfo, Natividad, and Jesus, all surnamed Villahermosa, before the Regional Trial Court of Cebu, Cebu City[2] , alleging that they are husband and wife; that Herminia is the registered owner of one-half (1/2) undivided share of a parcel of land designated as Lot No. 77-A of the subdivision plan (LRC) Psd 35298, being a portion of Lot 77 of the Talisay-Minglanilla Estate, with Filomena Lariosa, single, as the owner of the other one-half (1/2) share, as shown by Transfer Certificate of Title No. 12326 of the Registry of Deed of Cebu Province; that sometime in April 1965, as Filomena needed funds for the construction of her house, she obtained a loan from the Government Service Insurance System (GSIS) in the amount of Seven Thousand Pesos (P7,000.00) and to guarantee the payment thereof, the above-mentioned lot was mortgaged with the GSIS; that since Herminia is a co-owner thereof, the latter became a co-signer of the promissory note and other documents pertinent to said loan; that when Filomena died on October 9, 1976, she had not completely paid her GSIS loan and since Herminia feared that the mortgage might be foreclosed to the prejudice of her ½ undivided share, she paid the balance of Filomena's GSIS loan in the total sum of P848.00 thus obtaining the release of the mortgage and the certificate of title; that believing that she is the only heir of Filomena, considering that their other sister, Paulina Lariosa Villahermosa and mother of the defendants, had predeceased Filomena, Herminia began to possess the other half of the subject property and the house erected thereon in 1976 until the defendants disturbed her peaceful possession by claiming the undivided one-half of the property on the basis of a deed of sale dated July 28, 1976 allegedly executed by Filomena in favor of their father, Emilio Villahermosa, selling the subject lot 77-A for a consideration of THREE HUNDRED EIGHTY PESOS (P380.00); that plaintiffs offered the defendants what their father might have paid if they could prove that there was such a sale made by Filomena Lariosa to Emilio Villahermosa; however, the defendants stubbornly insisted that they would take possession of the property, thus, the plaintiffs sought the aid of the barangay for an amicable settlement and offered to redeem the ½ portion of the subject lot, but the settlement failed; hence plaintiffs deposited the amount of P380.00 with the trial court but the defendants, through their lawyer, refused to accept the amount deposited insisting that their father had bought the entire lot from Filomena

Lariosa.

Defendants (private respondents herein) filed their answer denying the material allegations of the complaint and interposing the following affirmative defenses: that the complaint states no cause of action; that there exists an express or implied trust between plaintiffs and Filomena and the latter with the defendants; that the subject lot 77-A was originally a part of lot 77 which belonged to defendants' deceased parents, Paulina L. Villahermosa, married to Emilio Villahermosa, who purchased the same by installment from the Bureau of Lands, and who after full payment was issued TCT No. 1258 on February 28, 1950; that sometime in 1950, through the intercession of Maxima Lariosa, (the mother of Filomena, Paulina and petitioner Herminia and grandmother of the defendants) a request was made that Filomena be allowed to occupy $\frac{1}{2}$ of lot No. 77 as her place of residence for a consideration of P380.00, subject to the condition that the said lot would be held in trust by Filomena to be returned to the Villahermosas before her death, to which request Spouses Villahermosas agreed; thus Filomena was allowed to use the $\frac{1}{2}$ portion of Lot No. 77 as her residence; however no formal deed was actually executed, although the sum of P380.00 was actually received by the Villahermosas; that Paulina Lariosa Villahermosa (defendants' mother) died on February 12, 1963 and sometime in the early part of 1964, Filomena wanted to demolish the old house standing on Lot No. 77 and build a new house on the site with GSIS funding, but since the GSIS required that the land on which the house to be erected should be mortgaged as collateral, Filomena requested the heirs of her sister Paulina to formalize the sale of one-half of the property; that acknowledging the "arrangement" that the lot would be held in trust by Filomena to be returned to the Villahermosas before her death, Emilio and his children (heirs of Paulina Lariosa) executed a deed of sale over one-half of Lot No. 77, to enable Filomena to comply with the GSIS requirement and accordingly, lot no. 77, which originally contained SEVEN HUNDRED FORTY-FIVE (745) SQUARE METERS, was subdivided into Lot 77-A with 372 square meters, which was transferred to Filomena Lariosa, and Lot 77-B with 373 square meters, which was transferred to Rodolfo Villahermosa; that since GSIS further required a co-signer for the loan, Filomena, without any consideration and for the purpose of complying with GSIS requirements, executed a simulated Deed of Sale over an undivided one-half portion of Lot No. 77-A in favor of the plaintiff Herminia Rosario who thereafter co-signed with Filomena the GSIS loan and executed a mortgage over Lot No. 77-A in favor of the GSIS and under such arrangement, the $\frac{1}{2}$ undivided share of the plaintiffs spouses Herminia and Jose Rosario was merely held in trust, all for the benefit of principal borrower and trustor, Filomena, to be returned to the Villahermosas before her death; that out of the GSIS loan, Filomena was able to build a house on Lot No. 77-A and since 1965 Filomena solely exercised ownership over the house and Lot No. 77-A until her death on October 9, 1976 and in compliance with the previous trust arrangement between Filomena and Emilio Villahermosa and his children, Filomena returned the lot and allowed the Villahermosas to buy back the lot for the same amount of P380.00 through a Deed of Sale dated July 28, 1976.

After trial, the Regional Trial Court of Cebu, Branch 6, Cebu City rendered its decision on May 27, 1991, the dispositive portion of which reads as follows:[3]

"WHEREFORE, this Court hereby orders the defendants to accept the payment of P380.00 for the purchase price of the lot; declares the plaintiff Herminia L. Rosario as the real and absolute owner of the entire of Lot No. 77-A of the Talisay-Minglanilla estate covered by TCT No. 12326; orders the defendants to execute a deed of conveyance transferring their rights over the one-half undivided share of Lot 77-A in favor of plaintiffs Herminia L. Rosario and Jose Rosario and orders the defendants to pay the plaintiffs P2,000.00 as attorney's fees, and P1,000.00 as moral damages. Costs against the defendants."

The trial court found that the subject lot (lot no. 77-A) as evidenced by TCT No. 12326, belonged to Filomena Lariosa and Herminia Rosario, each co-owner having a one half ($\frac{1}{2}$) undivided share; that the validity of this title has not been assailed by the defendants (private respondents herein), although defendants tried to show that the subject lot was only held in trust by Filomena Lariosa in favor of their parents, which argument cannot be deemed

a modification of the matters stated in the torrens title; the title cannot be the subject of a collateral attack, and as such the title remains valid and stands as conclusive proof of ownership of the subject lot. The court concluded that since co-ownership between Filomena Lariosa and Herminia Rosario had been established, Filomena could have sold only the $\frac{1}{2}$ undivided portion of the subject lot to Emilio considering that the other $\frac{1}{2}$ undivided portion belonged to Herminia Rosario, and Herminia as the registered co-owner has the right to exercise legal redemption under Article 1620 of the Civil Code considering that Emilio is a "third person", not being one of the registered co-owners. Moreover, Herminia was not furnished a written notice of such sale nor a copy of the deed of sale; thus Herminia's right to exercise legal redemption never began to run and had not yet expired when she tendered payment to the Villahermosas of the redemption price and subsequently consigned the amount in court in 1981.

Defendants (private respondents herein) appealed to the respondent court which reversed the lower court's finding; the following is the dispositive portion of the judgment:

"WHEREFORE, premises considered, the judgment appealed from is REVERSED and SET ASIDE, and a new one entered DISMISSING the complaint and recognizing the Deed of Sale dated July 28, 1976 as valid and subsisting. Costs against the plaintiffs-appellees.[4]

Petitioners have appealed to this court raising the following issues:

"Whether or not respondents and their late father are "strangers" within the contemplation of Article 1620 of the Civil Code.

Whether or not an implied trust under Article 1453 of the Civil Code existed between the late Filomena Lariosa in favor of the respondents and their late father.

Whether or not plaintiffs, particularly plaintiff Herminia Rosario, complied with the thirty (30) day period provided under Article 1623 of the Civil Code."

The basic question that needs to be addressed is (1) whether there is an implied trust that existed between Emilio Villahermosa and Filomena Lariosa over the subject property, and (2) whether an implied trust also existed between Filomena Lariosa and petitioner Herminia Rosario for the benefit of the Villahermosas.

It is well-settled that the jurisdiction of this court in cases brought to it from the Court of Appeals by way of petition for review under Rule 45, is limited to reviewing or revising errors of law imputed to it, its findings of fact being conclusive as a matter of general principle.[5] However, since in the instant case there is a conflict between the factual findings of the trial court and the respondent court, we have to rule on such factual issue as an exception to the general rule.[6]

Petitioners contend that there was no implied trust between Filomena Lariosa and Emilio Villahermosa and that petitioner Herminia Rosario had no way of knowing if there was any agreement for Filomena to return the subject property to Emilio and could not have refuted the execution and contents of the Deed of Sale dated July 28, 1976 executed by Filomena selling back the subject property to Emilio since she had no way of verifying whether the document was authentic and true from an independent source other than the Villahermosas; that notwithstanding the fact that Herminia did not question the execution of the controverted deed of sale in any action thus admitting the fact of execution, such admission does not include the truth and veracity of the contents of said document since the only fact which can be said as admitted for the purpose of exercising the right of redemption was the conveyance of the property but not extraneous matters such as the supposed reason for the sale, considering that both parties to the alleged Deed of Sale were both deceased at the time of the trial; that there are circumstances appearing on record which rendered the Deed of Sale questionable such as (1) the proximity of the alleged date of execution of the deed of sale with that of the death of Filomena on October 9, 1976 and the admission made by

respondent Lourdes Villahermosa that Filomena was under the doctor's care for several months, and (2) Emilio was only forced to present their deed of sale to Herminia when the latter presented her title over the property, thus indicating that said conveyance was tainted with irregularity; when Herminia Rosario acquired the 1/2 interest on the subject lot and the title was made in her and Filomena's names, petitioner Herminia was never aware of the alleged implied trust between Filomena and Emilio Villahermosa, thus the absolute ownership over the subject property was reposed only in the registered owners to the exclusion of any other person including Emilio Villahermosa. Hence Emilio would be considered as a "third person" so that even if Emilio Villahermosa and private respondents are co-heirs and co-owners of the other properties left behind by Filomena Lariosa, it will not affect the fact that neither Emilio nor the private respondents are registered co-owners of lot 77-A and Herminia can exercise her right of legal redemption. Finally, since petitioners were never given any written notice of the sale of Filomena to Emilio as required under Article 1623 of the Civil Code, the 30-day period within which petitioners should exercise their right of legal redemption never commenced to run so that when petitioner Herminia commenced this action with the trial court, her right to legal redemption still subsists.

In their comment, private respondents allege that the grounds relied upon by petitioner in this petition for review which are (1) that Emilio Villahermosa is not a "third party" contemplated under Art. 1620 and (2) that petitioner Herminia Rosario exercised her right of redemption within the 30-day reglementary period, are all moot and academic in view of the proven fact that trust was fully established and accomplished when Filomena, before her death, returned the subject lot to Emilio Villahermosa, hence redemption is not applicable. Even assuming redemption is available, the same is already moot and academic because the alleged redemption was made only on May 12, 1981, 5 years from the time petitioner had actual knowledge of the sale of the subject lot to Emilio Villahermosa who had already died on December 24, 1980, and redemption is thus unavailing. It is contended that the right of redemption must be exercised by the redemptioner during the lifetime of the seller (Filomena Lariosa) and buyer (Emilio Villahermosa, Sr.), and that private respondents' ownership of the subject land is not by sale but by succession, as they are the legitimate children of the deceased Emilio Villahermosa, Sr., hence not subject to any redemption right; assuming redemption is proper, the written notice required under Article 1623 was complied with because petitioner Herminia admitted during the trial that she learned for the first time in 1977 of the existence of the deed of sale, and yet Herminia allowed four (4) years to lapse before she commenced the present action for legal redemption. Finally, private respondents contend that they are not parties to the documents hence the wrong parties are being sued.

Petitioner filed their reply contending that private respondents' argument that petitioners' right of redemption over the subject lot was non-existent and was exercised on the wrong parties cannot be valid because private respondents as heirs of Emilio Villahermosa acquired only such rights as the said predecessor had over the subject property which in this case is subject to petitioners' right to redeem the property; that petitioners were never furnished a written notice of the sale by the vendor nor a copy of the Deed of sale nor had they directly participated in the transaction to give them actual knowledge of the sale; thus the 30-day period to redeem did not commence to run at the time this action was filed. Finally, petitioners note that although the decision of the respondent court recognizes the validity of the deed of sale between Filomena Lariosa and Emilio Villahermosa, the same can only pertain to ½ portion of the lot 77-A since petitioner Herminia is the registered co-owner of the other ½ of lot 77-A.

We find no merit in this petition.

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.[7] Trust relations between parties may either be

express or implied.[8] Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evidencing an intention to create a trust.[9] Implied trusts are those which without being express, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as a matter of equity, independently of the particular intention of the parties.[10] Implied trusts may either be resulting or constructive trusts, both coming into being by operation of law.

Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or hold the legal right to property which he ought not, in equity and good conscience, to hold.[11]

After a review of the evidence on record, we hold that a trust was indeed created between Filomena, Emilio Villahermosa and his children when lot 77-A was transferred in the name of Filomena. Where a lot was taken by a person under an agreement to hold it for, or convey it to another or to the grantor, a resulting or implied trust arises in favor of the person for whose benefit the property was intended[12] . As found by the respondent court:

"The alleged existence of a TRUST between the parties is allegedly based on the agreement between the defendants' predecessor-in-interest, Emilio Villahermosa, on the one hand, and the late Filomena Lariosa on the other, premised on the promise or commitment of the latter to return to the former Lot No. 77-A, title to which was transferred to her upon her request, to enable her to use it for a housing loan with the GSIS. This was testified to by defendant Lourdes Villahermosa, who attested on the following facts: Lot No. 77 was formerly owned by her parents, the late spouses Emilio Villahermosa and Paulina Lariosa Villahermosa, as shown by TCT No. 1258 issued in their names (Exhibit `3') and consisting of 745 square meters. Actually, her grandmother, Maxima Lariosa, had been occupying it and were (sic) the one paying for it with the Bureau of Lands, but she could no longer pay, so she assigned her rights (Exhibit `2') to Paulina (defendants' mother). Her grandmother Maxima asked Paulina (defendant's mother) to buy the land because she felt insecure while living in it. This is why it was her parents (Paulina and Emilio) who bought the lot after continuing to pay for it to the Bureau of Lands, and had it titled in their names (TSN, pp. 9-10 and 14-15, October 23, 1985). Grandmother Maxima continued to live in the old house located on the said lot. Aunt Filomena lived with her mother (grandmother Maxima) in that old house until she decided to build a new one (TSN, pp. 22-24, Ibid.). Grandmother Maxima died in 1958. Mother Paulina died in 1963 (TSN, pp. 7-8, Sept. 19, 1985). Lot No. 77 was subdivided upon request of her late aunt Filomena who wanted to build a house on the lot. To get a loan from the GSIS, it was necessary that the lot should be a guaranty for the loan. So she (Aunt Filomena) asked her father (Emilio) to get (have) part of the lot. Thus, her father called all the defendants, since their mother was already dead, about their aunt's request. They (her father, brothers and sisters) all agreed to her aunt's request on the condition that when she (Aunt Filomena) no longer needs it, she will return the lot to them (Ibid., pp. 9-10). And since her brother Rodolfo was also contemplating to build his office/home, the lot was subdivided into Lots 77-A and 77-B, thus, A for her aunt and B for her brother. There were two Deeds of Sale executed by them (her father, brothers and sisters), one in favor of their aunt (Exhibit `8' or `L'), and the other in favor of her brother, Rodolfo (Exhibit `7' or `M'). When her Aunt Filomena applied for a GSIS loan, she (Filomena) was just a temporary public school teacher newly transferred from Negros. Thus, she (Filomena) was required to have a co-maker who is a permanent employee of the MECS. It was the plaintiff, Herminia L. Rosario, who volunteered, being a permanent teacher of the Talisay Elementary School and also a member of the GSIS (pp. 10-15, Ibid.). Anyway, before her Aunt Filomena died in October 1976, she returned the lot to

her father, by executing a Deed of Sale (Exhibit '9' or 'O'), where it is explicitly stated:
'That in compliance with the VENDOR'S solemn promise to return or to sell back to the VENDEE Lot No. 77-A (SEVENTY-SEVEN-A), and for and in consideration of the sum of THREE HUNDRED EIGHTY PESOS ONLY (P380.00), Philippine Currency, the receipt whereof is hereby acknowledged by the VENDOR, said VENDOR does by these present sells (sic), transfers (sic) and conveys (sic) to the VENDEE herein, his heirs and assigns said RESIDENTIAL LOT NO. 77-A (SEVENTY-SEVEN-A), of the subdivision Plan (LRC) Psd-35298, together with all the improvements thereon, situated in the Poblacion, Municipality of Talisay, Province of Cebu, Philippines, with an area of THREE HUNDRED SEVENTY-TWO (372) SQUARE METERS, more or less, and which lot is more particularly described in Transfer Certificate of Title No. 11614 (ELEVEN THOUSAND SIX HUNDRED FOURTEEN) as follows: x x x'

The amount of P380.00 is the same amount which was paid by Filomena to her father (Lourdes's) in 1965 (TSN, p. 17, September 19, 1985).

We find these declarations indicative of an implied trust between Filomena and Emilio, as contemplated in Article 1453 of the Civil Code of the Philippines, to wit:

'When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or to the grantor, there is an implied trust in favor of the person whose benefit is contemplated.'

In the instant case, the transfer made to Filomena was with the declared intention to hold the lot for, or to transfer it back to Emilio, as shown by the following circumstances:

- a) The opening paragraph of the Deed of Sale as quoted above is indicative of the intention of the parties.
- b) The plaintiffs never contested the authenticity or genuineness of the Deed of Sale (Exhibit '9' or 'O'). On the contrary, their filing of a case for legal redemption is a recognition of the validity of the transfer made, albeit purportedly subject to legal redemption (which We shall discuss separately). In view thereof, they are deemed to have admitted its due execution as well as the facts stated therein.
- c) The circumstances narrated by Lourdes Villahermosa were never refuted or controverted by the plaintiffs with any rebuttal evidence. On the contrary, many of the material facts narrated by Lourdes were also testified to by Herminia such as the origins and history of Lot No. 77, the requirements for the GSIS loan, the need for a co-borrower for Filomena's loan, the parties' agreement to subdivide Lot No. 77 into two, etc.
- d) The consideration of P380.00 for the 1964 sale from Emilio to Filomena in 1964 was not increased by any single centavo despite the time difference of twelve (12) years when the lot was resold to the former in 1976, and the glaring fact that the 1964 sale was only for the lot, whereas the 1976 sale includes all the improvements thereon. This is an indication that the deed was really executed in compliance with the promise made by Filomena in 1964 to return or resell the property to the Villahermosas."

When Emilio Villahermosa and his children, the respondents herein conveyed Lot No. 77-A in favor of Filomena Lariosa in order to enable the latter build a house thereon with a GSIS loan, an implied if not express trust was created in favor of the original registered owners of the subject lot, Emilio Villahermosa, together with his children, in view of Filomena's declared intention to hold the lot for them and her promise to return it back to Emilio and private respondents; in fact, Filomena, before her death, returned the lot with its improvements by virtue of the Deed of Sale dated July 28, 1976 precisely pursuant to the trust agreed upon; it stated that the sale was "in compliance with the vendor's solemn promise to return or sell back to the vendee lot No. 77-A."

The next question is whether such trust in favor of Emilio and his heirs (private respondents) is effective or binding upon petitioner Herminia Rosario who is the registered co-owner of the subject Lot No. 77-A pursuant to

the deed of sale executed by Filomena in favor of Herminia on December 3, 1964. .

We rule in the affirmative.

It is petitioner's theory that when the title to the subject property was registered solely in the name of Filomena Lariosa in 1964 under TCT No. 11614, there was already a conveyance and transfer of ownership to Filomena from Emilio and private respondents so that when petitioner Herminia acquired the one-half interest over the subject property and registration thereof was made in the names of both Filomena Lariosa and Herminia Rosario, Herminia was not aware of such alleged existing implied trust; hence the absolute ownership over the property was then reposed only in Filomena Lariosa and Herminia Rosario and under Art. 1620, Emilio Villahermosa and any other person would be considered a "third person"; that when Filomena Lariosa conveyed the property to Emilio Villahermosa in 1976, not being a co-owner, petitioner Herminia has the right to redeem the property.

We are not persuaded by petitioners' argument. It was established that the subject property was only held by Filomena in trust for Emilio and private respondents. We sustain private respondents' allegation that the deed of sale dated December 3, 1964 executed between Filomena Lariosa and Herminia Rosario was merely for the purpose of facilitating and expediting the approval of Filomena's loan with the GSIS for the construction of Filomena's new house on the subject lot, the same being borne out by the evidence.

The proven circumstances clearly demonstrated that the Deed of Sale in favor of Herminia was a mere accommodation arrangement, hence an absolutely simulated contract of sale. It was shown that sometime in 1964, Filomena Lariosa wanted to build a new house on the subject lot (lot no. 77-A) by obtaining a loan from the GSIS, however, the GSIS required that the land title should be mortgaged as collateral, thus, Filomena Lariosa requested Emilio Villahermosa and his heirs (private respondents herein) to execute a Deed of Sale transferring lot 77-A in her favor, and the Deed of Sale was executed on June 6, 1964. In addition to the title requirement, the borrower's experience as teacher and her salary were also considered.[13] Since Filomena Lariosa was only a temporary teacher at the time she decided to obtain a loan from the GSIS to finance the construction of her house,[14] Filomena Lariosa executed a Deed of Sale on December 3, 1964 over the ½ portion of subject property in favor of her sister, petitioner Herminia Lariosa Rosario, who was a permanent school teacher, for the price of P100.00.[15] Filomena Lariosa applied for the loan and petitioner Herminia Rosario was made a co-signer on the promissory note and other documents pertinent to Filomena's GSIS loan; Thereafter the loan was approved and the house of Filomena was constructed on the subject lot. These circumstances unmistakably show that the sale of the ½ portion of the subject lot by Filomena Lariosa to Herminia Rosario and the transfer of the title in both the names of Filomena and Herminia was for the purpose of obtaining the GSIS loan. Moreover, undisputed is the fact that the physical possession of both the house and the subject lot remained through the years with Filomena Lariosa until her death on October 9, 1976. Herminia Rosario never exercised her alleged right of a co-ownership over the subject lot, nor did she assume the burden of ownership; Herminia admitted that she never paid the taxes on the subject lot during Filomena's lifetime[16] as this was paid exclusively by Filomena Lariosa.

Notably, the new house was constructed on the middle of the subject lot without any objection on the part of petitioners[17] and Herminia Rosario never demanded for a separation or partition of their respective shares[18] despite the fact that Herminia purportedly owns the ½ portion of the subject lot. The execution of the deed of sale dated July 28, 1976 by Filomena Lariosa in favor of Emilio categorically stated that it was in compliance with the vendor's solemn promise to return or to sell back the entire lot 77-A with all its improvements thereon to Emilio Villahermosa and Filomena never mentioned the name of petitioner Herminia as her co-owner, thus, confirming that the sale made by Filomena to Herminia was never intended to result in a real transfer of ownership, and the subsequent deed of sale of Filomena to Emilio Villahermosa was an affirmation of such intention.

The cumulative effect of the evidence on record as narrated identified badges of simulation showing that the sale of the ½ portion of the subject lot made by Filomena to Herminia was not intended to have a legal effect between them, said parties having entered into a sale transaction by which they did not intend to be legally bound. As such it is void and is not susceptible of ratification,[19] produces no legal effects,[20] and does not convey property rights nor in any way alter the juridical situation of the parties.[21] Petitioner Herminia and Filomena never became co-owners of the subject land since the sale which transpired between them was only simulated; when Filomena returned or sold back the property to Emilio Villahermosa by virtue of a Deed of Sale dated July 28, 1976 , no right of legal redemption[22] accrued in favor of petitioner Herminia. The right of legal redemption among co-owners presupposes the existence of a co-ownership, which is not present in the instant case. Article 1620 which grants such right to a co-owner applies only when the co-ownership of an undivided thing or right belongs to different person.[23] Co-ownership is the right of common dominion which two or more persons have in a spiritual part of thing which is not physically divided.[24] Petitioner had never become a co-owner of the lot No. 77-A.

The fact that the title to the subject lot was issued in 1965 under TCT No. 12326 registered in the names of both Filomena and Herminia Rosario and said to be conclusive as to all matters contained therein, did not operate to vest upon petitioners' the ownership over the ½ portion of lot 77-A considering the above-mentioned circumstances surrounding the issuance of such title. . The torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud.[25] It does not permit one to enrich himself at the expense of another. Where one does not have any rightful claim over a real property, the torrens system of registration can confirm or record nothing.

When petitioner Herminia obtained the registration of the ½ share of the subject lot by virtue of a simulated deed of sale it impressed upon the title a constructive trust in favor of the true party, Filomena Lariosa. The conclusion we reach, finding constructive trust under Article 1447[26] of the New Civil Code existing between Filomena and Herminia, rests on the principles of the general law on trust which, through Article 1442 of the Civil Code , have been adopted or incorporated into our civil law, to the extent that such principles are not inconsistent with the Civil Code, other statutes and the Rules of Court.

This Court has ruled in the case of Sumaoang vs. Judge, RTC, Br. XXXI, Guimba, Nueva Ecija,[27] That:

"A constructive trust, otherwise known as a trust ex maleficio, a trust ex delicto, a trust de son tort, an involuntary trust, or an implied trust, is a trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice. However, a constructive trust does not arise on every moral wrong in acquiring or holding property or on every abuse of confidence in business or other affairs; ordinarily such a trust arises and will be declared only on wrongful acquisitions or retentions of property of which equity, in accordance with its fundamental principles and the traditional exercise of its jurisdiction or in accordance with statutory provision, takes cognizance. It has been broadly ruled that a breach of confidence, although in business or social relations, rendering an acquisition or retention of property by one person unconscionable against another, raises a constructive trust.

And specifically applicable to the case at bar is the doctrine that 'A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where although acquired originally without fraud, it is against equity that it should be retained by the person holding it.'

The above principle is not in conflict with the New Civil Code, Codes of Commerce, Rules of court and special laws. And since We are a court of law and of equity, the case at bar must be resolved on the general principles of law on constructive trust which basically rest on equitable considerations in order to satisfy the demands of justice, morality, conscience and fair dealing and thus protect the innocent against fraud. As the respondent court said, "It behooves upon the courts to shield fiduciary relations against every manner of chicanery or detestable design cloaked by legal technicalities."

Although the citations in the above-mentioned case originated from American jurisprudence, they may well be applied in our jurisdiction. "(S)ince the law of trust has been more frequently applied in England and in the United States than it has been in Spain, we may draw freely upon American precedents in determining the effects of trusts, especially so because the trust known to American and English equity jurisprudence are derived from the fidei commissa of the Roman Law and are based entirely upon civil law principles.xxx"[28] A constructive trust is created by a court of equity as a means of affording relief.[29] Constructive trust constitutes a remedial device "through which preference of self is made subordinate to loyalty to others.[30] In particular, fraud on the part of the person holding or detaining the property at stake is not essential in order that an implied trust may spring into being. In the words of Judge Cardozo, in Beatty vs. Guggenheim Exploration Co.[31]

"(w)hen property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee."

Since the sale was a simulated conveyance of real property, the vendee, Herminia, acquired no title thereto and she merely became a trustee of the ½ portion of the subject property for the benefit of its real owner Filomena who held the entire property in trust for the Villahermosas. The beneficiary is entitled to enforce the trust notwithstanding the irrevocability of the torrens title. The torrens system was not intended to foment betrayal in the performance of a trust.[32]

WHEREFORE, premises considered, the petition for review is DENIED and the questioned decision of the respondent Court of Appeals is AFFIRMED..

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Justice Delilah Vidallon-Magtolis, ponente, concurred in by Justices Quirino D. Abad Santos, Jr. and Artemio G. Tuquero.

[2] Docketed as Civil Case No. R-20861.

[3] Rollo, p. 43.

[4] Rollo, p. 54.

[5] Tongoy vs. CA, 123 SCRA 118.; Policarpio vs. CA, 269 SCRA 344; Floro vs Llenado, 244 SCRA 713, Gobonseng vs. CA, 246 SCRA 472; Co vs. CA, 247 SCRA 195.

[6] Policarpio vs. CA, supra; Quebral vs. CA, 252 SCRA 353; Cayabyab vs. IAC, 232 SCRA 1; Smodo vs. CA, 235 SCRA 307; Floro vs. Llenado, supra.

[7] vda de Esconde vs. CA, 253 SCRA 66 citing TOLENTINO, Civil Code of the Philippines, Vol. IV, 1991 ed., p.669 citing 54 Am Jur. 21.

[8] Article 1441, New Civil Code.

[9] 89 C.J.S. 722; O'lao vs. Co Cho Chit, 220 SCRA 662.

[10] Tigno vs. CA, 280 SCRA 271; Meynardo Policarpio vs. CA, 269 SCRA 344 ; O'lao vs. Co Cho Chit, supra citing 89 C.J.S. 724.

[11] Morales, et al. vs. CA, et al., 274 SCRA 282 citing Huang vs. CA, 236 SCRA 420; Vda. de Esconde vs. CA, 253 SCRA 66.

[12] Article 1453, Civil Code.

[13] TSN, December 13, 1982, p. 18.

[14] TSN, July 29, 1983, p. 3.

[15] TSN, June 22, 1983, p. 22.

[16] TSN, December 13, 1982 , p.20.

[17] TSN, July 29, 1983, p. 7.

[18] Ibid , p.6.

[19] Article 1409.

[20] Carino vs. CA, 152 SCRA 529.

[21] Tongoy vs. CA, 123 SCRA 99.

[22] Article 1620 of the Civil Code

"A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common. .

[23]Article 484, Civil Code.

[24] 1987 edition, Ambrosio Padilla, Civil Code, Vol. V.

[25] Santiago vs. CA, 278 SCRA 98.

[26] Article 1447 of the Civil Code provides:

"Article 1447. The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in Article 1442 shall be applicable"

[27] 215 SCRA 136 citing Roa, Jr. vs. CA, 123 SCRA 3.

[28] Miguel vs. CA, 29 SCRA 760 citing Government of the Philippine Islands vs. Abadilla, 46 Phil. 642.

[29] Sumaoang vs. Judge, RTC, Branch XXXI, Guimba, Nueva Ecija, supra, See, e.g. International Refugee Organization vs. Maryland Drydock Co., 169 F. 2d 284 (1950); Healy vs. Commissioner of Internal Revenue, 345 US 278 (1953); see, generally, G. Boggert, Trusts (6d), p. 287 (1987).

[30] supra, citing Meinhard vs. Salmon, 164 NE 545, 548 (1928) per Cardozo , J.

[31] *supra* citing 122 N.E. 378 (1919).

[32] *Municipality of Victorias vs. CA*, 149 SCRA 32; *Escobar vs. Locsin* 74 Phil 86.

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