ALFREDO N. AGUILA, JR, PETITIONER, VS. HONORABLE COURT OF APPEALS AND FELICIDAD S. VDA. DE ABROGAR, RESPONDENTS.

G.R. No. 127347. November 25, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, dated November 29, 1990, which reversed the decision of the Regional Trial Court, Branch 273, Marikina, Metro Manila, dated April 11, 1995. The trial court dismissed the petition for declaration of nullity of a deed of sale filed by private respondent Felicidad S. Vda. de Abrogar against petitioner Alfredo N. Aguila, Jr.

The facts are as follows:

Petitioner is the manager of A.C. Aguila & Sons, Co., a partnership engaged in lending activities. Private respondent and her late husband, Ruben M. Abrogar, were the registered owners of a house and lot, covered by Transfer Certificate of Title No. 195101, in Marikina, Metro Manila. On April 18, 1991, private respondent, with the consent of her late husband, and A.C. Aguila & Sons, Co., represented by petitioner, entered into a Memorandum of Agreement, which provided:

> (1) That the SECOND PARTY [A.C. Aguila & Sons, Co.] shall buy the above-described property from the FIRST PARTY [Felicidad S. Vda. de Abrogar], and pursuant to this agreement, a Deed of Absolute Sale shall be executed by the FIRST PARTY conveying the property to the SECOND PARTY for and in consideration of the sum of Two Hundred Thousand Pesos (P200,000.00), Philippine Currency;
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> (2) The FIRST PARTY is hereby given by the SECOND PARTY the option to repurchase the said property within a period of ninety (90) days from the execution of this memorandum of agreement effective April 18, 1991, for the amount of TWO HUNDRED THIRTY THOUSAND PESOS (P230,000.00);
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> (3) In the event that the FIRST PARTY fail to exercise her option to repurchase the said property within a period of ninety (90) days, the FIRST PARTY is obliged to deliver peacefully the possession of the property to the SECOND PARTY within fifteen (15) days after the expiration of the said 90 day grace period;
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> (4) During the said grace period, the FIRST PARTY obliges herself not to file any lis pendens or whatever claims on the property nor shall be cause the annotation of say claim at the back of the title to the said property;
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> (5) With the execution of the deed of absolute sale, the FIRST PARTY warrants her ownership of the property and shall defend the rights of the SECOND PARTY against any party whom may have any interests over the property;
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> (6) All expenses for documentation and other incidental expenses shall be for the account of the FIRST PARTY;
>
> (7) Should the FIRST PARTY fail to deliver peaceful possession of the property to the SECOND PARTY after

> the expiration of the 15-day grace period given in paragraph 3 above, the FIRST PARTY shall pay an amount equivalent to Five Percent of the principal amount of TWO HUNDRED PESOS (P200.00) or P10,000.00 per month of delay as and for rentals and liquidated damages;
>
> (8) Should the FIRST PARTY fail to exercise her option to repurchase the property within ninety (90) days period above-mentioned, this memorandum of agreement shall be deemed cancelled and the Deed of Absolute Sale, executed by the parties shall be the final contract considered as entered between the parties and the SECOND PARTY shall proceed to transfer ownership of the property above described to its name free from lines and encumbrances.[2]

On the same day, April 18, 1991, the parties likewise executed a deed of absolute sale,[3] dated June 11, 1991, wherein private respondent, with the consent of her late husband, sold the subject property to A.C. Aguila & Sons, Co., represented by petitioner, for P200,000.00. In a special power of attorney dated the same day, April 18, 1991, private respondent authorized petitioner to cause the cancellation of TCT No. 195101 and the issuance of a new certificate of title in the name of A.C. Aguila and Sons, Co., in the event she failed to redeem the subject property as provided in the Memorandum of Agreement.[4]

Private respondent failed to redeem the property within the 90-day period as provided in the Memorandum of Agreement. Hence, pursuant to the special power of attorney mentioned above, petitioner caused the cancellation of TCT No. 195101 and the issuance of a new certificate of title in the name of A.C. Aguila and Sons, Co.[5]

Private respondent then received a letter dated August 10, 1991 from Atty. Lamberto C. Nanquil, counsel for A.C. Aguila & Sons, Co., demanding that she vacate the premises within 15 days after receipt of the letter and surrender its possession peacefully to A.C. Aguila & Sons, Co. Otherwise, the latter would bring the appropriate action in court.[6]

Upon the refusal of private respondent to vacate the subject premises, A.C. Aguila & Sons, Co. filed an ejectment case against her in the Metropolitan Trial Court, Branch 76, Marikina, Metro Manila. In a decision, dated April 3, 1992, the Metropolitan Trial Court ruled in favor of A.C. Aguila & Sons, Co. on the ground that private respondent did not redeem the subject property before the expiration of the 90-day period provided in the Memorandum of Agreement. Private respondent appealed first to the Regional Trial Court, Branch 163, Pasig, Metro Manila, then to the Court of Appeals, and later to this Court, but she lost in all the cases.

Private respondent then filed a petition for declaration of nullity of a deed of sale with the Regional Trial Court, Branch 273, Marikina, Metro Manila on December 4, 1993. She alleged that the signature of her husband on the deed of sale was a forgery because he was already dead when the deed was supposed to have been executed on June 11, 1991.

It appears, however, that private respondent had filed a criminal complaint for falsification against petitioner with the Office of the Prosecutor of Quezon City which was dismissed in a resolution, dated February 14, 1994.

On April 11, 1995, Branch 273 of RTC-Marikina rendered its decision:

> Plaintiff's claim therefore that the Deed of Absolute Sale is a forgery because they could not personally appear before Notary Public Lamberto C. Nanquil on June 11, 1991 because her husband, Ruben Abrogar, died on May 8, 1991 or one month and 2 days before the execution of the Deed of Absolute Sale, while the plaintiff was still in the Quezon City Medical Center recuperating from wounds which she suffered at the same vehicular accident on May 8, 1991, cannot be sustained. The Court is convinced that the three required documents, to wit: the Memorandum of Agreement, the Special Power of Attorney, and the Deed of Absolute Sale were all signed by the parties on the same date on April 18, 1991. It is a common and accepted business practice of those engaged in money lending to prepare an undated absolute deed of sale in loans of money

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> secured by real estate for various reasons, foremost of which is the evasion of taxes and surcharges. The plaintiff never questioned receiving the sum of P200,000.00 representing her loan from the defendant. Common sense dictates that an established lending and realty firm like the Aguila & Sons, Co. would not part with P200,000.00 to the Abrogar spouses, who are virtual strangers to it, without the simultaneous accomplishment and signing of all the required documents, more particularly the Deed of Absolute Sale, to protect its interest.
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> . . . .
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> WHEREFORE, foregoing premises considered, the case in caption is hereby ORDERED DISMISSED, with costs against the plaintiff.

On appeal, the Court of Appeals reversed. It held:

> The facts and evidence show that the transaction between plaintiff-appellant and defendant-appellee is indubitably an equitable mortgage. Article 1602 of the New Civil Code finds strong application in the case at bar in the light of the following circumstances.
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> First: The purchase price for the alleged sale with right to repurchase is unusually inadequate. The property is a two hundred forty (240) sq. m. lot. On said lot, the residential house of plaintiff-appellant stands. The property is inside a subdivision/village. The property is situated in Marikina which is already part of Metro Manila. The alleged sale took place in 1991 when the value of the land had considerably increased.
>
> For this property, defendant-appellee pays only a measly P200,000.00 or P833.33 per square meter for both the land and for the house.
>
> Second: The disputed Memorandum of Agreement specifically provides that plaintiff-appellant is obliged to deliver peacefully the possession of the property to the SECOND PARTY within fifteen (15) days after the expiration of the said ninety (90) day grace period. Otherwise stated, plaintiff-appellant is to retain physical possession of the thing allegedly sold.
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> In fact, plaintiff-appellant retained possession of the property "sold" as if they were still the absolute owners. There was no provision for maintenance or expenses, much less for payment of rent.
>
> Third: The apparent vendor, plaintiff-appellant herein, continued to pay taxes on the property "sold". It is well-known that payment of taxes accompanied by actual possession of the land covered by the tax declaration, constitute evidence of great weight that a person under whose name the real taxes were declared has a claim of right over the land.
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> It is well-settled that the presence of even one of the circumstances in Article 1602 of the New Civil Code is sufficient to declare a contract of sale with right to repurchase an equitable mortgage.
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> Considering that plaintiff-appellant, as vendor, was paid a price which is unusually inadequate, has retained possession of the subject property and has continued paying the realty taxes over the subject property, (circumstances mentioned in par. (1) (2) and (5) of Article 1602 of the New Civil Code), it must be conclusively presumed that the transaction the parties actually entered into is an equitable mortgage, not a sale with right to repurchase. The factors cited are in support to the finding that the Deed of Sale/Memorandum of Agreement with right to repurchase is in actuality an equitable mortgage.
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> Moreover, it is undisputed that the deed of sale with right of repurchase was executed by reason of the loan extended by defendant-appellee to plaintiff-appellant. The amount of loan being the same with the amount of the purchase price.
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> . . . .

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> Since the real intention of the party is to secure the payment of debt, now deemed to be repurchase price: the transaction shall then be considered to be an equitable mortgage.

Being a mortgage, the transaction entered into by the parties is in the nature of a pactum commissorium which is clearly prohibited by Article 2088 of the New Civil Code. Article 2088 of the New Civil Code reads:

> ART. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

The aforequoted provision furnishes the two elements for pactum commissorium to exist: (1) that there should be a pledge or mortgage wherein a property is pledged or mortgaged by way of security for the payment of principal obligation; and (2) that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged and mortgaged in the event of non-payment of the principal obligation within the stipulated period.

In this case, defendant-appellee in reality extended a P200,000.00 loan to plaintiff-appellant secured by a mortgage on the property of plaintiff-appellant. The loan was payable within ninety (90) days, the period within which plaintiff-appellant can repurchase the property. Plaintiff-appellant will pay P230,000.00 and not P200,000.00, the P30,000.00 excess is the interest for the loan extended. Failure of plaintiff-appellee to pay the P230,000,00 within the ninety (90) days period, the property shall automatically belong to defendant-appellee by virtue of the deed of sale executed.

Clearly, the agreement entered into by the parties is in the nature of pactum commissorium. Therefore, the deed of sale should be declared void as we hereby so declare to be invalid, for being violative of law.

. . . .

WHEREFORE, foregoing considered, the appealed decision is hereby REVERSED and SET ASIDE. The questioned Deed of Sale and the cancellation of the TCT No. 195101 issued in favor of plaintiff-appellant and the issuance of TCT No. 267073 issued in favor of defendant-appellee pursuant to the questioned Deed of Sale is hereby declared VOID and is hereby ANNULLED. Transfer Certificate of Title No. 195101 of the Registry of Marikina is hereby ordered REINSTATED. The loan in the amount of P230,000.00 shall be paid within ninety (90) days from the finality of this decision. In case of failure to pay the amount of P230,000.00 from the period therein stated, the property shall be sold at public auction to satisfy the mortgage debt and costs and if there is an excess, the same is to be given to the owner.

Petitioner now contends that: (1) he is not the real party in interest but A.C. Aguila & Co., against which this case should have been brought; (2) the judgment in the ejectment case is a bar to the filing of the complaint for declaration of nullity of a deed of sale in this case; and (3) the contract between A.C. Aguila & Sons, Co. and private respondent is a pacto de retro sale and not an equitable mortgage as held by the appellate court.

The petition is meritorious.

Rule 3, §2 of the Rules of Court of 1964, under which the complaint in this case was filed, provided that "every action must be prosecuted and defended in the name of the real party in interest." A real party in interest is one who would be benefited or injured by the judgment, or who is entitled to the avails of the suit.[7] This ruling is now embodied in Rule 3, §2 of the 1997 Revised Rules of Civil Procedure. Any decision rendered against a person who is not a real party in interest in the case cannot be executed.[8] Hence, a complaint filed against such a person should be dismissed for failure to state a cause of action.[9]

Under Art. 1768 of the Civil Code, a partnership "has a juridical personality separate and distinct from that of each of the partners." The partners cannot be held liable for the obligations of the partnership unless it is shown

that the legal fiction of a different juridical personality is being used for fraudulent, unfair, or illegal purposes.[10] In this case, private respondent has not shown that A.C. Aguila & Sons, Co., as a separate juridical entity, is being used for fraudulent, unfair, or illegal purposes. Moreover, the title to the subject property is in the name of A.C. Aguila & Sons, Co. and the Memorandum of Agreement was executed between private respondent, with the consent of her late husband, and A. C. Aguila & Sons, Co., represented by petitioner. Hence, it is the partnership, not its officers or agents, which should be impleaded in any litigation involving property registered in its name. A violation of this rule will result in the dismissal of the complaint.[11] We cannot understand why both the Regional Trial Court and the Court of Appeals sidestepped this issue when it was squarely raised before them by petitioner.

Our conclusion that petitioner is not the real party in interest against whom this action should be prosecuted makes it unnecessary to discuss the other issues raised by him in this appeal.

WHEREFORE, the decision of the Court of Appeals is hereby REVERSED and the complaint against petitioner is DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Eugenio S. Labitoria and concurred in by Justices Cancio C. Garcia and Omar U. Amin.

[2] Exh. A, Folder of Exhibits for the Plaintiff, pp. 1-2.

[3] Exh. H, id., pp. 12-13.

[4] Exh. 3, Folder of Exhibits for the Defendant, p. 3.

[5] Petition, Rollo, p. 7.

[6] Exh. 4, Folder of Exhibits for the Defendant, pp. 15-16.

[7] Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125 (1951).

[8] Smith, Bell & Co., Inc. v. Court of Appeals, 267 SCRA 530 (1997).

[9] Columbia Pictures, Inc. v. Court of Appeals, 261 SCRA 144 (1996).

[10] See McConnel v. Court of Appeals, 111 Phil. 310 (1961).

[11] See City of Bacolod v. Gruet, 116 Phil. 1005 (1962).

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