BERNICE LEGASPI, PETITIONER, VS. SPOUSES RITA AND FRANCISCO ONG, RESPONDENTS.

G.R. NO. 141311. May 26, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari filed by petitioner Bernice Legaspi seeking to annul and set aside the Decision dated July 30, 1998 of the Court of Appeals (CA)[1] reversing the decision of the trial court and ruling that the deed of sale with right to repurchase executed by respondent spouses in favor of petitioner over the subject property was an equitable mortgage; and its Resolution dated January 4, 2000[2] denying petitioner's motion for reconsideration.

Respondent spouses Francisco and Rita Ong were owners of a parcel of land located at 375 Matienza Street, San Miguel, Manila with an area of 1,010 square meters and a two-storey house. They mortgaged the subject property with the Permanent Savings and Loan Bank (PSLB) to secure their loan. For their failure to pay their loan, PSLB foreclosed the mortgage on the subject property and thereafter sold it in a public auction where the bank emerged as the highest bidder. Respondent spouses failed to redeem the property within the redemption period, thus, the title was consolidated in the name of PSLB under Transfer Certificate of Title (TCT) No. 182956 on November 10, 1988[3] but respondent spouses continued to occupy the premises. When PSLB was subsequently ordered liquidated by the Monetary Board of the Central Bank, PSLB's acquired assets were required to be disposed of to pay its debts, thus respondent spouses, being the original owners of the subject property, were given first priority by the Central Bank Liquidator to buy back their property in the amount of P2,655,000.00 on or before June 13, 1989. Since respondent spouses had no money then, they approached petitioner's father, Stephen Hong, a classmate and friend of respondent Francisco, and sought his help to pay and redeem the subject property. Petitioner and her father were shown the title of the subject property in respondent Rita's name. After some deliberations thereon, the parties' agreement was reduced into writing denominated as a Deed of Sale with Right to Repurchase[4] drafted by petitioner's counsel, Atty. Bienvenido Rillo, in the following terms and conditions:

> . . .
>
> The title to above-described property is presently held by the Central Bank of the Philippines and the latter has given VENDOR the privilege of getting back the title to the above-described property by paying them the amount of TWO MILLION SIX HUNDRED FIFTY FIVE THOUSAND (P2,655,000.00) PESOS;
>
> VENDOR has offered to sell this property to VENDEE on condition she be allowed to repurchase this property subject to the terms and conditions hereinafter recited:
>
> - VENDEE shall pay the Central Bank of the Philippines the amount of TWO MILLION SIX HUNDRED FIFTY FIVE THOUSAND (P2,655,000.00) PESOS for and in behalf of VENDOR;
>
> - VENDOR shall have the right to repurchase the above-described property within a period of four (4) months, without interest, which shall be extended by another month upon request of the VENDOR;

- During the four (4) month period or its extension VENDOR shall have the right to re-sell the said property to any party, other than the VENDEE, who may desire to purchase the property;

- In the event VENDOR should fail to repurchase the property within the four (4) months agreed upon then VENDEE, notwithstanding the extended period, shall pay interest at the rate of four (4%) percent per month reckoned from the execution of this document;

- In the event VENDOR shall repurchase the property at any time before the expiration of four (4) months or its extended period the VENDOR shall pay interest on the amount at the rate of four (4%) percent per month reckoned from the signing of this Agreement;

- Should VENDOR fail to comply with the foregoing terms and conditions then the property shall by virtue thereof become the property of VENDEE;

- All expenses to be incurred as a result of this transaction such as documentary stamps, transfer fee, capital gains tax and documentation fees, shall be for the account of VENDOR;

NOW, THEREFORE, for and in consideration of the foregoing, VENDOR hereby sells, cedes, transfers and conveys unto the VENDEE the above-described parcel of land together with all the improvement thereon fall (sic) from any lien and encumbrances. VENDOR hereby warrants the property is not devoted to the cultivation of palay or corn nor is it covered by the priority development program of the government.[5]

which respondent spouses and petitioner signed on June 13, 1989. Immediately after the deed was signed, and since it was the last day to redeem the property, petitioner, with her lawyer, Atty. Rillo, and respondent Francisco went to the Central Bank and with petitioner's check paid the amount of P2,655,000.00 to the bank for and in behalf of respondents. A Deed of Absolute Sale[6] was executed between PSLB's Liquidator, Renan V. Santos, and respondent spouses, as original owners, over the subject property on June 13, 1989. Respondent Francisco then wrote[7] the Deputy Liquidator of PSLB, Central Bank, to release the Deed of Sale and the title to the subject property to petitioner as his authorized representative. Petitioner received the documents on June 19, 1989.[8]

On September 26, 1989, petitioner wrote respondents a letter[9] reminding them that the four-month period to repurchase the subject property will expire on October 12, 1989 and that failure to pay the amount of P2,655,000.00 on its due date will force her to take the corresponding action to consolidate title on the property in her name. On November 23, 1989, petitioner's counsel wrote respondents a letter[10] informing them that petitioner, acting on their request for extension of a week's time to repurchase the subject property, consented to give them up to November 28, 1989. However, respondent spouses failed to redeem the subject property from petitioner within the period given them. Despite the expiration of the period to repurchase, petitioner still granted respondent spouses opportunity to repurchase the subject property in a letter dated April 14, 1990, where petitioner's counsel demanded for the payment of the amount of P2,655,000.00 plus all the interest due thereon within five days from receipt otherwise, necessary legal action will be taken to transfer ownership in petitioner's name.[11]

In October 1990, petitioner filed a petition for consolidation of ownership[12] before the Regional Trial Court (RTC) of Manila, which was raffled to Branch 39,[13] docketed as Civil Case No. 90-54623. Petitioner prayed for the cancellation of TCT No. 182956 and for the issuance of a new title in her name, attorney's fees and cost of suit.

In their answer with compulsory counterclaim,[14] respondent spouses alleged that the Deed of Sale with Right to Repurchase did not reflect the true intention of the parties because the document was actually an equitable mortgage with illegal provision, i.e., pactum commissorium; that petitioner has no cause of action against respondents; that there was non-joinder of the real party-in-interest; that the Court has no jurisdiction over the

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case; that relief sought will cause undue enrichment on respondents as the subject property claimed was worth P15 million.[15] They prayed for the dismissal of the petition and asked for damages, attorney's fees and costs of the suit as counterclaim.

On July 6, 1993, the RTC rendered its decision[16] in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the consolidation of title in the name of petitioner Bernice Legaspi and the Register of Deeds of the City of Manila is hereby ordered to cancel Transfer Certificate of Title No. 182956, issued in the name of Permanent Savings and Loan Bank, and in lieu thereof, a new one be issued in the name of petitioner BERNICE LEGASPI upon payment of the corresponding charges. Respondents are hereby ordered to pay attorney's fees in the sum of P25,000.00.
>
> Respondents' counterclaim is hereby DISMISSED for lack of merit. With costs against respondents.[17]

In arriving at its decision, the trial court made the following disquisition:

> The main controversy centers on the true nature of Exhibit "C", the Deed of Absolute Sale with Right to Repurchase. The Court examines Exhibit "C", and finds it clear, unambiguous and unequivocal. If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of the stipulation shall control (Art. 1370 CC). The intention of the parties is to be deduced from the language employed by them and the terms of the contract found unambiguous, are conclusive in the absence of averment and proof of mistake, the question being not what intention existed in the minds of the parties but what intention is expressed by the language used. When the words of a contract are plain and readily understandable, there is no room for construction (Dihiasan, et al. vs. CA, G.R. 49839, Sept. 14, 1987).
>
> According to Rita Ong who admitted having signed the document she trusted Mr. Hong as her husband's former classmate. There is a presumption in law that a person takes ordinary care of his concern (Rule 131, Sec. 5(d), Revised Rules of Evidence). It is to be presumed that Rita Ong a pharmacy and medical technology graduate would not sign a document without being satisfied of the contents thereof. She knew fully well what she was signing. Rita Ong admitted on the stand that the matter was discussed in the residence of the petitioner in the presence of her husband and Mr. Hong. She was completely aware, therefore, that she was executing a document, a Deed of Sale with Right to Repurchase. If she did not like its contents, she could easily refrain from signing the document. After signing the document, she cannot now be heard to complain that the parties to said exhibit intended the same to be loan with mortgage contrary to what are clearly expressed therein. The natural presumption is that one does not sign a document without first informing himself of its contents. It is the duty of every contracting party to learn and know the contents of a contract before he signs and delivers it. He owes this duty to the other party to the contract because the latter may probably pay his money and shape his action in reliance upon the agreement. To permit a party when sued on a written contract to admit that he signed it but to deny that it expresses the agreement he made or to allow him to admit that he signed it but did not read it or know its stipulation could absolutely destroy the value of all contracts. (Tan Tun Sia vs. Yu Bin Sentua, 56 Phil. 711).
>
> The Court rejects respondents' Exhibits "11", "11-A" and "12" to show the inadequacy of the price considering that evaluation of P4,500.00 per square meter and the appraisal of P15M were not made on or before June 13, 1989, the date the contract was executed by the parties. The evidence shows that the lot in question is titled in the name of Permanent Savings and Loan Bank for P2,655,000.00 and was paid by the petitioner in such amount. Said amount is approximately 50% of their total assessed value of P1,016,580.00 (Exhibit "D") as appearing in the tax declaration. A difference in value is not always a decisive factor for determining whether or not the contract is one of sale with right to repurchase or equitable mortgage.
>
> After the sale on June 13, 1989, Spouses Ong did not pay the real estate taxes on the land.
>
> The records show that after the expiration of respondents' right to repurchase the lot, demands were made but

> were completely ignored, hence, the filing of this case and the unlawful detainer with the Metropolitan Trial Court (Exhibit "E").
>
> Assessing the evidence on record, the Court declares that the contract entered into by the petitioner and respondents Spouses Ong is one of a sale with right to repurchase, as supported by the evidence on record. Respondents Ongs had already parted with their property when the mortgage was foreclosed by Permanent Savings and Loan Bank for P2,655,000.00 which was the price of the lot and, therefore, having discussed the transaction with the petitioner prior to the preparation of the contract, respondents cannot now repudiate what they have done. Since petitioner was forced to litigate to enforce her right under the contract, respondent spouses Ong should pay reasonable attorney's fees.[18]

Respondent spouses' motion for reconsideration was denied in an Order dated November 25, 1993.[19]

At the time that the proceedings for the petition for consolidation of ownership were on-going, petitioner, on February 14, 1991, claiming her right to possess the subject property on the basis of respondents' failure to repurchase the subject property had filed an unlawful detainer case against respondents[20] before the Metropolitan Trial Court (MeTC), Branch 19, Manila, docketed as Civil Case No. 134770-CV. The MeTC decided against respondent spouses on September 1, 1993[21] whereby respondent spouses were ordered to vacate the subject property and surrender possession thereof to petitioner; to pay P25,000.00 a month from February 13, 1991 as reasonable compensation for the use and occupancy of the subject property until possession is surrendered to petitioner; and attorney's fees plus cost of the suit. The MeTC granted the motion for execution filed by petitioner and issued a writ of execution on October 8, 1993.[22] Possession of the subject property was delivered by the sheriff to petitioner's father on October 11, 1993.[23] Respondent spouses' appeal with the RTC was dismissed in an Order dated March 9, 1994[24] for being moot and academic as the respondents had already abandoned the property and possession thereof was turned over to petitioner and ordered that the records be remanded to the court a quo for execution of its own judgment.

As respondents were aggrieved by the decision of the RTC granting the consolidation of title in petitioner's name, respondent spouses appealed to the CA. During the pendency of respondents' appeal, petitioner filed a motion for execution pending appeal of the RTC's decision dated July 6, 1993. The appellate court granted the motion for execution pending appeal in a Resolution[25] dated December 1, 1994, subject to the posting of a bond in the amount of P50,000.00. It anchored its judgment on the following findings:[26] (1) the property had been adjudged by the trial court to be owned by petitioner who paid the purchase price to the bank; (2) the ejectment case filed by petitioner against respondents was decided by the MeTC in favor of the former by ordering respondents to vacate the property, to pay P25,000.00 a month from February 13, 1991, as compensation for the use of the property and to surrender possession, in addition to attorney's fees; (3) possession of the property was already delivered to petitioner and that respondents had already abandoned the premises "much earlier"; (4) upon inspection made by the sheriff, it was found that the house was destroyed, cannibalized and stripped of vital fixtures and furnitures; (5) major repairs had to be undertaken at "quite staggering cost"; (6) realty taxes were not paid by respondents from 1989 up to the present nor did they pay the capital gains tax, transfer fee, documentary stamps and documentation fees even though there was an agreement for such payment; (7) taxes due on the property, and surcharges on overdue payment continue to accumulate which endangered the property and the possibility of its being lost through auction sale; and (8) the grant of execution pending appeal would then bind the petitioner to preserve the property and to return it to respondents should the appeal be in their favor.

Respondent spouses filed their motion for reconsideration which was denied by the CA in a Resolution dated June 30, 1995.[27] As a consequence, the Register of Deeds of Manila cancelled TCT No. 182956 in the name of PSLB and issued TCT No. 219397 in petitioner's name.

On July 30, 1998, the CA rendered herein assailed decision reversing the RTC decision dated July 6, 1993, the dispositive portion of which reads:

Wherefore, judgment is hereby rendered setting aside the decision of the court a quo dated July 6, 1993 in Civil Case No. 90-54623 and dismissing the complaint of plaintiff-appellee.

The appellants are hereby ordered to redeem the property from appellee in the amount of P2,655,000.00 with legal interest computed from the time the sale of redemption fell due up to the time the obligation is fully paid.

Appellee is hereby ordered to pay appellants the monthly rent of the subject premises from October 1993 up to the time possession thereof is turned over to appellant, which is hereby fixed in the amount of P25,000.00 a month; attorney's fees in the amount of P100,000.00; and the cost of suit.[28]

The appellate court's reversal was based on the following findings:

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

From the aforecited provisions, it is clear that the contract executed between the parties is one of equitable mortgage. The law requires anyone, and not the concurrence of all the circumstances mentioned therein to conclude that the transaction is one of equitable mortgage. It is clear from the records of the case, that appellants remained in possession of the property even after the execution of the contract, aside from the fact that the amount in the document purportedly the consideration of the sale was only P2.6 Million, while the property commands the price of P16 Million (Exhs. 12-12-U; TSN, August 12, 1992, pp. 16-17, 19), hence, there was gross inadequacy of the price. Likewise, the deed stipulates the payment of interest (TSN, April 27, 1992, p. 40; TSN, May 28, 1992, p. 31), and there were a number of extensions of time given by the appellee for the payment by appellants of the sum of P2.6 Million (TSN, Sept. 30, 1991, pp. 5-6, 54-56).

These circumstances proven by the appellants to show that the agreement was not sale with right to repurchase but one of equitable mortgage are conclusive. On the other hand, appellee failed to rebut these pieces of evidence.

. . .

The extensions of the original period of redemption as contained in pars. 2, 3 and 5 of the Deed of Sale with Right to Repurchase are indicative that the instrument was one of equitable mortgage. As ruled by the Supreme Court in Reyes vs. De Leon, 20 SCRA 639 and Burdalian vs. CA, 129 SCRA 645, it said that –

It is well-settled that extension of the period of redemption is indicative of equitable mortgage.

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After a careful evaluation of the above-stated circumstances, this Court finds the present case to exhibit several of the familiar badges of a concealed mortgage enumerated by Art. 1602 of the Civil Code. According to the said provisions of the Civil Code, presence of any of the circumstances enumerated would be sufficient enough to declare the transaction of absolute sale as one impressed with an equitable mortgage. In the instant case there is even more than one circumstance indicating an equitable mortgage . . .

It has also been convincingly shown that appellants were badly in need of money at the time of the transaction because they wanted to redeem the property and the deadline within which to do that had almost been up. This circumstance is likewise conclusive of the fact that "a pacto de retro sale may be deemed an equitable mortgage when executed due to urgent necessity for money of the apparent vendor."[29]

The CA denied petitioner's motion for reconsideration in a Resolution dated January 4, 2000.

Petitioner filed the instant petition for review on certiorari on the question of whether a Deed of Sale with Right To Repurchase may be interpreted as one of equitable mortgage as found by the CA.

As a rule, only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court, nonetheless factual issues may be entertained by this Court in exceptional cases. These include instances where the findings of fact are conflicting or when the findings of the CA are contrary to those of the trial court,[30] as in the present case. We are constrained to go over the records of the case and examine the arguments of the parties in their pleadings.

We have consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature.[31] Decisive for the proper determination of the true nature of the transaction between the parties is the intent of the parties,[32] as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situations of the parties at that time; the attitudes, acts, conduct, and declarations of the parties; the negotiations between them leading to the deed; and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding.[33]

Even if a contract is denominated as a pacto de retro, the owner of the property may still disprove it by means of parol evidence, provided that the nature of the agreement is placed in issue by the pleadings filed with the trial court. It must be stressed, however, that there is no conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage. In fact, it is often a question difficult to resolve and is frequently made to depend on the surrounding circumstances of each case. When in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy.[34]

Art. 1602 of the Civil Code enumerates the instances when a contract, regardless of its nomenclature, may be presumed to be an equitable mortgage. They are as follows: (a) when the price of a sale with right to repurchase is unusually inadequate; (b) when the vendor remains in possession as lessee or otherwise; (c) 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; (d) when the purchaser retains for himself a part of the purchase price; (e) when the vendor binds himself to pay the taxes on the thing sold; and, (f) in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. Art. 1603 provides that in case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.

The presence of even one of the above-mentioned circumstances as enumerated in Article 1602 is sufficient basis to declare a contract of sale with right to repurchase as one of equitable mortgage. As stated by the Code

Commission which drafted the new Civil Code, in practically all of the so-called contracts of sale with right of repurchase, the real intention of the parties is that the pretended purchase price is money loaned and in order to secure the payment of the loan, a contract purporting to be a sale with pacto de retro is drawn up.[35]

The CA found the presence of four circumstances in the transaction on which bases it ruled that the transaction was an equitable mortgage, to wit: (a) respondents remained in possession of the subject property even after the execution of the contract; (b) there was gross inadequacy of price of P2,655,000.00 as contract price since the property commands the price of P16 million; (c) extensions of the original period of redemption; and (d) stipulation of interest.

We agree with the finding of the CA that the transaction between respondents and petitioner was not a sale with right to repurchase but an equitable mortgage.

Petitioner argues that Article 1602 does not apply in the instant case; that petitioner was the one who purchased the subject property from PSLB, the registered owner, for and in behalf of respondents; that since the ownership had been consolidated in PSLB and the title was in PSLB's name as early as November 10, 1988, respondents were no longer the owners of the subject property at the time the Deed of Sale with Right To Repurchase was executed by respondents in favor of petitioner on June 13, 1989; that respondents can no longer constitute a mortgage on the subject property; that respondents had the personality to sell the property only because they were the original owners who were favored by the Bank with the first option but it was petitioner's money that was used in buying back the subject property. Petitioner also claims that there was never any loan between the parties as money was not given by one to the other since petitioner paid her money directly to the bank, thus debt which is a condition sine qua non of an equitable mortgage was absent.

We are not persuaded.

While it is true that the title to the subject property was consolidated in PSLB's name as early as 1988, the property was bought back by respondent spouses, the original owners, who were given the first option to buy it during PSLB's liquidation. Respondents were given up to June 13, 1989 to buy back the property and since they had no money, they had to approach petitioner's father to help them in their predicament. As respondents were able to redeem the subject property with the use of petitioner's money, a deed of sale was executed by the Liquidator in favor of respondent spouses on June 13, 1989, the last day given to respondents to buy back the property. Since the money came from petitioner, respondent spouses, as owners, had executed a document, which was denominated as a Deed of Sale with Right to Repurchase, which was prepared by petitioner's counsel and signed by the parties also on June 13, 1989. It can be seen that the transactions are intimately related and they were even embodied in the deed of sale with right to repurchase, to wit:

> The title to above-described property is presently held by the Central Bank of the Philippines and the latter has given VENDOR the privilege of getting back the title to the above-described property by paying them the amount of TWO MILLION SIX HUNDRED FIFTY FIVE THOUSAND (P2,655,000.00) PESOS;
>
> VENDOR has offered to sell this property to VENDEE on condition she be allowed to repurchase this property subject to the terms and conditions hereinafter recited:
> 1. VENDEE shall pay the Central Bank of the Philippines the amount of TWO MILLION SIX HUNDRED FIFTY FIVE THOUSAND (P2,655,000.00) PESOS for and in behalf of VENDOR;

Clearly, the deed of sale with right to repurchase was precisely executed by respondents to secure the money paid by petitioner for and in behalf of respondents to PSLB Liquidator to buy back the subject property, i.e., as equitable mortgage. Notably, respondent spouses bought back the subject property in the amount of P2,655,000.00 and sold the same to petitioner at exactly the same amount they paid to PSLB Liquidator. If the

intention of the respondent spouses were to sell, they could have at least earned some profit or interest on such sale, otherwise, they could have just allowed PSLB Liquidator to sell it to anybody in a public bidding. Respondents wanted to hold on to their property and not to part with it by selling the same.

Petitioner claims that respondents expressly recognized their intention to sell the subject property to her when they executed a letter[36] requesting the bank Liquidator to release the Deed of Sale executed between the bank and respondents as well as the duplicate copy of the title to petitioner.

We are not impressed.

Respondent Francisco wrote Deputy Liquidator Leopoldo Ramos and requested him to release the deed of sale and title to the subject property to petitioner as his authorized representative. There was nothing in the letter that would show that respondents acknowledged petitioner as the new owner of the property.

Although, we do not agree with the CA that the price of the sale with right to repurchase is grossly inadequate since the appraisal of the property in the amount of more than P16 million was not made on or before June 13, 1989, the date the contract was executed by the parties, but only on July 24, 1992,[37] we find in the transaction the presence of some other circumstances enumerated in Art. 1602 of the Civil Code which would establish that the transaction was an equitable mortgage rather than sale.

Respondent spouses, as vendors, remained in the possession of the subject property even after the execution of the deed of sale with right to repurchase.[38] Well settled to the point of being elementary is the doctrine that where the vendor remains in physical possession of the land as lessee or otherwise, the contract should be treated as an equitable mortgage.[39] If the deed executed was really what it purports to be, a sale with right to repurchase, petitioner should have asserted her right for the immediate delivery of the subject property to her so that she would have the enjoyment and possession of the same, since petitioner, during those times, was renting a place in New Manila, Quezon City,[40] and not allowed respondents to freely stay in the premises.

Notably, in all the letters of petitioner and her lawyer, i.e., reminding respondents that the period to repurchase was about to lapse and later the extension of period to repurchase and demands for respondents to repurchase the property in the amount of P2,655,000.00 plus interest within a certain period, were sent to respondents' address which is the subject property, without registering any objection on respondents' continuous possession of the same. In effect, petitioner acknowledged respondents' right to retain possession of the subject property even after the execution of the "pacto de retro sale." It was only on January 14, 1991 that petitioner made a demand for respondents to vacate the subject property after respondents failed to "repurchase" the property.

Another circumstance is the fact that the period to repurchase the subject property was extended by petitioner. In the letter dated November 23, 1989[41] to respondents by petitioner's counsel, Atty. Rillo, he stated that petitioner had consented to respondents' request for an extension of time to repurchase the subject property by giving them up to November 28, 1989. In fact, even in the petition for consolidation itself, petitioner stated that despite the expiration of the right to repurchase on November 28, 1989, petitioner still granted respondent spouses opportunity to repurchase the subject property in a letter dated April 14, 1990 by paying the amount due thereon. Moreover, petitioner, on cross-examination, even admitted that more than one extension was given for the respondents to repurchase.[42] It is well settled that extension of the period of redemption is indicative of equitable mortgage.[43]

Petitioner claims that there was no separate instrument extending the period of redemption granting a new period executed between the parties. Petitioner through her counsel wrote Exhibit "I" extending the period of redemption. In Claravall vs. Court of Appeals,[44] we held that a note executed extending a period of redemption is indicative

of equitable mortgage.

Also, we find that there was no transmission of ownership to the vendee. As stated in the deed, to wit:

> 8. Should VENDOR fail to comply with the foregoing terms and conditions then the property shall by virtue thereof become the property of VENDEE;

This stipulation is contrary to the nature of a true pacto de retro sale since ownership of the property sold is immediately transferred to the vendee a retro upon execution of the sale, subject only to the repurchase of a vendor a retro within the stipulated period. Such stipulation is considered a pactum commissorium enabling the mortgagee to acquire ownership of the mortgaged properties without need of foreclosure proceedings which is a nullity being contrary to the provisions of Article 2088 of the Civil Code. The inclusion of such stipulation in the deed shows the intention to mortgage rather than to sell.

Moreover, the following provision, to wit:

> 3. During the four (4) month period or its extension VENDOR shall have the right to re-sell the said property to any party, other than the VENDEE, who may desire to purchase the property;

of the subject deed is a concrete revelation of the real intention of the parties, as contemplated in paragraph (6) of Article 1602 of the Civil Code, that the transaction was merely to secure the payment of a debt. A purchaser like the petitioner would not allow the respondent spouses, as the purported vendors, to re-sell the property to any party who may desire to purchase the property. This clearly indicates that petitioner recognized the right of respondent spouses to exercise their ownership of the property.

Petitioner contends that the assailed decision of the CA runs counter with the findings of the same appellate court in the Resolution dated December 1, 1994 granting petitioner's motion for execution pending appeal.

While the appellate court had earlier issued a Resolution granting the motion for execution pending appeal which upheld the trial court's findings that the transaction between the parties was one of sale, such finding did not preclude the same appellate court from making its final judgment on the appealed case after a review of the evidence. The nature of the transaction is the very issue raised in the appeal filed by the respondents. Execution pending appeal does not bar the continuance of the appeal on the merits,[45] for the Rules of Court precisely provides for restitution according to equity in case the executed judgment is reversed on appeal.[46]

We find no basis for the CA to order petitioner to pay respondents the monthly rent of P25,000.00 for the former's possession of the subject property from October 1993 up to the time the property is surrendered to respondents. The origin of this petition for review is the petition for consolidation of ownership filed by petitioner which was granted by the trial court since it found that the transaction between respondents and petitioner is a sale. Respondents then filed their appeal with the CA. An examination of the appellants' (respondents') brief filed before the appellate court merely claimed that they are the ones entitled to the damages and attorney's fees without mention of any back rentals. In fact, in the prayer in their brief, respondents merely asked that another judgment be rendered dismissing the plaintiff's (petitioner's) complaint. Moreover, the appellate court did not make any discussion on the basis of how it arrived in the amount of P25,000.00 as monthly rental since the same was only mentioned in the dispositive portion of the decision. Courts in making an award must point out specific facts which can serve as basis for measuring whatever compensatory or actual damages are borne.[47]

We also disallow the award of attorney's fees as the appellate court merely stated such award in the dispositive portion without explicitly stating in the text of the decision the legal reason for such award. In Consolidated Bank & Trust Corporation (Solidbank) vs. Court of Appeals,[48] we held:

> The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, the discretion of the court to award attorney's fees under Article 2208 of the Civil Code of the Philippines demands factual, legal and equitable justification, without which the award is a conclusion without a premise and improperly left to speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (Universal Shipping Lines Inc. v. Intermediate Appellate Court, 188 SCRA 170 [1990]). The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of the award. Refractories Corporation of the Philippines v. Intermediate Appellate Court, 176 SCRA 539 [1989].

WHEREFORE, the petition is PARTIALLY GRANTED. The decision of the Court of Appeals is AFFIRMED with MODIFICATION to the effect that the award of monthly rentals on the subject property and attorney's fees in favor of respondents is DELETED.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.
Tinga, J., out of the country.

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[1] Rollo, pp. 97-103; Penned by Justice Corona Ibay-Somera, concurred in by Justices Oswaldo D. Agcaoili and Martin S. Villarama, Jr.; CA-G.R. CV No. 44503.

[2] Rollo, p. 105.

[3] Records, p. 169, Exhibit "B."

[4] Records, pp. 170-173; Exhibit "C."

[5] Ibid.

[6] Records, pp. 177-178; Exhibit "G."

[7] Id., p.179; Exhibit "H."

[8] Id., p. 192; Exhibit "N."

[9] Id., p. 193; Exhibit "O."

[10] Id., p. 180; Exhibit "I."

[11] Id., p. 181; Exhibit "J."

[12] Id., pp. 1-6.

[13] Subsequently re-raffled to Branch 10.

[14] Rollo, pp. 71-73.

[15] The appraisal report of Eligio Saligan, respondents' witness, showed that the actual cash/market value of the subject property as of July 24, 1992 was P16,004,072.00; Exhibit "12-C," Folder 3, Defendants' Exhibits.

[16] Records, pp. 376-380.

[17] Id., p. 380.

[18] Id., pp. 379-380.

[19] Id., p. 412.

[20] Id., pp. 194-198; Exhibit "P."

[21] CA Rollo, pp. 82-88; Penned by Judge Ernesto A. Reyes.

[22] Id., p. 89.

[23] Id., p. 90; The Sheriff noted that the premises were totally abandoned by respondents.

[24] Id., pp. 91-92; RTC, Branch 5, Manila, docketed as Civil Case No. 93-683275; Per Judge Cesar J. Mindaro.

[25] Id., pp. 115-122; Penned by Justice Bernardo LL. Salas, concurred in by Justices Jorge S. Imperial and Pacita Cañizares-Nye.

[26] Id., pp. 118-122.

[27] Id., p. 176.

[28] Id., pp. 102-103.

[29] Id., pp. 100-102.

[30] Austria vs. Gonzales, Jr., 420 SCRA 414, 421 (2004).

[31] Ramos vs. Sarao, G.R. No. 149756, February 11, 2005.

[32] Camus vs. Court of Appeals, 222 SCRA 612 (1993); Capulong vs. Court of Appeals, 130 SCRA 245 (1984).

[33] Ramos vs. Sarao, supra; Reyes vs. Court of Appeals, 339 SCRA 97, 103 (2000).

[34] Lorbes v. Court of Appeals, 351 SCRA 716, 725–726 (2001).

[35] Capulong vs. CA, supra.

[36] Exhibit "H," Records, p. 179.

[37] TSN, August 12, 1992, p. 17; Exhibit "12-C."

[38] Par. (2), Art. 1602, Civil Code.

[39] Olea vs. Court of Appeals, 247 SCRA 274 (1995); Lazatin vs. Court of Appeals, 211 SCRA 129 (1992); Capulong vs. Court of Appeals, 130 SCRA 245 (1984).

[40] TSN, September 30, 1991, p. 28.

[41] Exhibit "I," Records, p. 180.

[42] TSN, September 30, 1991, p. 56.

[43] Claravall vs. Court of Appeals, 190 SCRA 439, 450 (1990), citing Reyes vs. de Leon, 20 SCRA 369 (1967); Bundalian vs. Court of Appeals, 129 SCRA 645(1984).

[44] Supra.

[45] Silverio vs. Court of Appeals, 141 SCRA 527, 546 (1986).

[46] Section 5 of Rule 39 of the Rules of Court provides:

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Sec. 5. Effect of reversal of executed judgment. – Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court, may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

[47] Del Mundo vs. Court of Appeals, 240 SCRA 348, 356 (1995).

[48] 246 SCRA 193 (1995).

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