

**NARCISA AVILA, ASSISTED BY HER HUSBAND BERNARDO AVILA,
SPOUSES JANUARIO N. ADLAWAN AND NANETTE A. ADLAWAN,
NATIVIDAD MACAPAZ, ASSISTED CHAIRPERSON, BY HER HUSBAND
EMILIO MACAPAZ...**

G.R. NO. 141993. March 17, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the July 30, 1999 decision[1] and January 19, 2000 resolution of the Court of Appeals in CA-G.R. CV No. 50899.

The subject of this controversy is a portion of a 433-square meter parcel of land located in Poblacion, Toledo City, Cebu. The entire property is designated as cadastral lot no. 348 registered in the name of Anunciacion Bahena vda. de Nemeño. Upon her death, ownership of the lot was transferred by operation of law to her five children, petitioners Narcisa Avila, Natividad Macapaz, Francisca Adlawan, Leon Nemeño and Jose Bahena. These heirs built their respective houses on the lot.

In 1964, respondent Benjamin Barabat leased a portion of the house owned by Avila. His co-respondent, Jovita Barabat, moved in with him in 1969 when they got married.

Avila subsequently relocated to Cagayan de Oro City. She came back to Toledo City in July 1979 to sell her house and share in the lot to her siblings but no one showed interest in it. She then offered it to respondents who agreed to buy it. Their agreement was evidenced by a private document dated July 17, 1979 which read:

ALANG SA KASAYURAN SA TANAN:

Nga ako, NARCISA AVILA, nagpuyo sa siyudad sa Cagayan de Oro, 52 años ang panu-igon, minyo ug may mga anak magatimaan ning maong kasulatan nga akong guibaligya sa kantidad nga walo ka libo ka pesos (P8,000.00) ang bahin nga balay ug yuta nga sinunod ko sa akong mga ginikanan ngadto sa magtiayon nga Benjamin ug Jovita Barabat, mga lumulupyo sa siyudad sa Toledo.

Nga ang maong lote ug balay ana-a mahimutang sa Poblacion, Toledo City kansang mga utlanan mao kining musunod:

Atubangan ----- N. Rafols Street

Dapit sa Tuo ----- yuta ug mga panimalay sa Magsuong Natividad Macapaz, Francisca Adlawan, Jose Bahena ug Leoning Nemen

Dapit sa wala ----- kanal sa tubig

Dapit sa luyo ----- lote nga kumon sa magsuong Nemen

Tiniman-an: (Sgd.)

Narcisa Avila[2]

Respondents stopped paying rentals to Avila and took possession of the property as owners. They also assumed the payment of realty taxes on it.

Sometime in early 1982, respondents were confronted by petitioner Januario Adlawan who informed them that they had until March 1982 only to stay in Avila's place because he was buying the property. Respondents replied that the property had already been sold to them by Avila. They showed Adlawan the July 17, 1979 document executed by Avila.

On January 6, 1983, respondents received a letter from Atty. Joselito Alo informing them that Avila had sold her house and share in lot no. 348 to his clients, the spouses Januario and Nanette Adlawan. Considering the sale to the spouses Adlawan as prejudicial to their title and peaceful possession of the property, they demanded that Avila execute a public document evidencing the sale of the property to them but Avila refused.

Respondents filed a complaint for quieting of title with the Regional Trial Court (RTC) of Toledo City, Branch 29.[3] Docketed as Civil Case No. T-53, the complaint was subsequently amended to include annulment of the deed of sale to the spouses Adlawan, specific performance, partition and damages as additional causes of action. Respondents anchored their claim over the property to the July 17, 1979 private document which they presented as Exhibit "A."

Avila denied having offered to sell her property to respondents. She claimed that respondents gave her an P8,000 loan conditioned on her signing a document constituting her house and share in lot no. 348 as security for its payment. She alleged that she innocently affixed her signature on Exhibit "A" which was prepared by respondents and which they now claim as a private deed of sale transferring ownership to them.

The trial court rendered its May 9, 1995 decision in favor of respondents. It declared Exhibit "A" as a valid and lawful deed of sale. It nullified the subsequent deed of sale between Avila and the spouses Adlawan. Avila was ordered to execute a formal and notarized deed of sale in favor of respondents. It also held petitioners liable for moral damages and attorney's fees.

Aggrieved, petitioners filed an appeal with the Court of Appeals. In its July 30, 1999 decision, the appellate court affirmed the decision of the RTC in toto. Petitioners sought a reconsideration but it was denied. Hence, this petition.

Petitioners claim that the appellate court erred in ruling that the transaction between respondents and Avila was an absolute sale, not an equitable mortgage. They assert that the facts of the case fell within the ambit of Article 1602 in relation to Article 1604 of the Civil Code on equitable mortgage because they religiously paid the realty tax on the property and there was gross inadequacy of consideration. In this connection, Articles 1602 and 1604 provide:

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 of 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.

x x x x x x x x

Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.

They also claim that the court erred in denying them the right to redeem the property and in ruling that there was implied partition by the acts of the parties.

We rule in favor of respondents.

For Articles 1602 and 1604 to apply, two requisites must concur: (1) the parties entered into a contract denominated as a contract of sale and (2) their intention was to secure an existing debt by way of mortgage.[4] Here, both the trial and appellate courts found that Exhibit "A" evidenced a contract of sale. They also agreed that the circumstances of the case show that Avila intended her agreement with respondents to be a sale. Both courts were unanimous in finding that the subsequent acts of Avila revealed her intention to absolutely convey the disputed property. It was only after the perfection of the contract, when her siblings began protesting the sale, that she wanted to change the agreement.

Furthermore, contrary to petitioners' claim, the trial court found that it was respondents who took over the payment of real property taxes after the execution of Exhibit "A." There is no reason to depart from these factual findings because, as a rule, factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are binding and conclusive on the Court and generally will not be reviewed on appeal to us.[5] There is no reason for us to deviate from this rule.

Petitioners' claim of gross inadequacy of selling price has no basis. They failed to introduce evidence of the correct price at the time the land was sold to respondents in 1979. How can we therefore conclude that the price was grossly inadequate? In the absence of evidence as to the fair market value of a parcel of land at the time of its sale, we cannot reasonably conclude that the price at which it was sold was inadequate.[6]

Petitioners' rely on Article 1623 in relation to Article 1620 of the Civil Code to justify their right of redemption. This is incorrect.

These provisions state:

Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or 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.

x x x x x x x x

Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

Petitioners' right to redeem would have existed only had there been co-ownership among petitioners-siblings. But there was none. For this right to be exercised, co-ownership must exist at the time the conveyance is made by a co-owner and the redemption is demanded by the other co-owner or co-owner(s).[7] However, by their own admission, petitioners were no longer co-owners when the property was sold to respondents in 1979. The co-ownership had already been extinguished by partition.

The regime of co-ownership exists when the ownership of an undivided thing or right belongs to different persons.[8] By the nature of co-ownership, a co-owner cannot point to any specific portion of the property owned in common as his own because his share in it remains intangible and ideal.[9]

Every act intended to put an end to indivision among co-heirs is deemed to be a partition.[10] Here, the particular portions pertaining to petitioners had been ascertained and they in fact already took possession of their respective parts. The following statement of petitioners in their amended answer[11] as one of their special and affirmative defenses was revealing:

F-8. That all defendants [i.e., petitioners] in this case who are co-owners of lot 348 have their own respective buildings constructed on the said lot in which case it can be safely assumed that that their respective shares in the lot have been physically segregated although there is no formal partition of the land among themselves.[12](emphasis supplied)

Being an express judicial admission, it was conclusive on petitioners unless it was made through palpable mistake or that no such admission was in fact made.[13] Petitioners proved neither and were therefore bound by it.

The purpose of partition is to separate, divide and assign a thing held in common among those to whom it belongs.[14] By their own admission, petitioners already segregated and took possession of their respective shares in the lot. Their respective shares were therefore physically determined, clearly identifiable and no longer ideal. Thus, the co-ownership had been legally dissolved. With that, petitioners' right to redeem any part of the property from any of their former co-owners was already extinguished. As legal redemption is intended to minimize co-ownership,[15] once a property is subdivided and distributed among the co-owners, the community ceases to exist and there is no more reason to sustain any right of legal redemption.[16]

Under the law, subject to certain conditions, owners of adjoining urban land have the pre-emptive right to a lot before it is sold to third parties, or the redemptive right if it has already been sold. In particular, Article 1622 of the Civil Code provides:

Art. 1622. Whenever a piece of urban land is so small and so situated in that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of any adjoining land has a right of pre-emption at a reasonable price.

If the re-sale has been perfected, the owner of the adjoining land shall have a right of redemption, also at a reasonable price.

When two or more owners of adjoining lands wish to exercise the rights of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred.

However, this provision does not apply here. Aside from the fact that petitioners never raised it as an issue, the conditions provided for its application were not met. While the property may be considered as urban land, it was not shown or even alleged that its area and location would render a major portion of no practical use within a reasonable time. Neither was there any allegation to the effect that the disputed property was bought merely for speculation.

WHEREFORE, the petition is hereby DENIED. The July 30, 1999 decision and January 19, 2000 resolution of

the Court of Appeals in CA-G.R. CV No. 50899 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Penned by Associate Justice Mariano M. Umali and concurred in by Associate Justices Quirino D. Abad-Santos, Jr. and Romeo J. Callejo, Sr. (now Associate Justice of the Supreme Court) of the Sixth Division of the Court of Appeals.

[2]CA Decision, rollo, pp. 65-66. The agreement was attached as one of the annexes to the complaint and offered as respondents' evidence before the court a quo. The trial court admitted the document even if no translation in the official languages as required by Rule 132, Section 33 of the Rules of Court was presented by respondents. Translated in English, it read:

TO ALL CONCERNED:

That I, NARCISA AVILA, residing at Cagayan de Oro City, 52 years of age, married and with children[,] executed this document where I sell for the amount of eight thousand pesos (P8,000.00) my house and lot representing my share in the inheritance from my parents in favor of the spouses Benjamin and Jovita Barabat, both residing in Toledo City.

That the house and lot are situated at Poblacion, Toledo City with the following boundaries:

At the front ----- N. Rafols Street

At the right side ----- lot and houses of the siblings Natividad Macapaz, Francisca Adlawan, Jose Bahena and Leoning Nemen

At the left side ----- creek

At the rear ----- common lot of the Nemen siblings

(Sgd.) Narcisa Avila

[3] Presided by Judge Peary G. Aleonar.

[4]Heirs of the Late Spouses Aurelio and Esperanza Balite v. Lim, G.R. No. 152168, 10 December 2004, 446 SCRA 56.

[5] Miranda v. Besa, G.R. No. 146513, 30 July 2004, 435 SCRA 532.

[6] Acabal v. Acabal, G.R. No. 148376, 31 March 2005, 454 SCRA 555.

[7] Vda. de Ape v. Court of Appeals, G.R. No. 133638, 15 April 2005, citing Uy v. Court of Appeals, 316 Phil. 863 (1995).

[8] Id. citing Felices v. Colegado, 146 Phil. 180 (1970).

[9] Salatandol v. Retes, G.R. No. L-38120, 27 June 1988, 162 SCRA 568.

[10] Article 1082, Civil Code.

[11] RTC records, pp. 198-202.

[12] Id., p. 200.

[13] Cf. Section 4, Rule 129, Rules of Court.

[14] Article 1079, Civil Code.

[15] Basa v. Aguilar, 208 Phil. 452 (1982).

[16] Vda. de Ape v. Court of Appeals, supra.

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