

VICTORIA CLARAVALL, ASSISTED BY HER HUSBAND, LORETO CLARAVALL, PETITIONER, VS. RICARDO LIM, ROBERTO LIM, AND ROGELIO LIM, RESPONDENTS.

G.R. No. 152695. July 25, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court which seeks to set aside the Decision[1] of the Court of Appeals (CA) dated March 18, 2002 in CA-G.R. CV No. 38859. The assailed CA Decision affirmed the Decision[2] of the Regional Trial Court (RTC) of Isabela, Branch 17, in Civil Case No. 2583.

The instant petition arose from a Complaint for Consolidation of Ownership of Real Properties filed by herein respondents against herein petitioner, alleging as follows:

x x x x

3. That sometime on December 3, 1976, the defendant, with the marital consent of her husband, executed a DEED OF SALE WITH THE RIGHT OF REPURCHASE SELLING AND CONVEYING unto the plaintiffs the following described properties, to wit:

A COMMERCIAL LOT located in the Centro of Ilagan, Isabela x x x.

A DWELING HOUSE with a ground area of 108 square meters, more or less, constructed with wooden materials and with G.I. roofing, erected on the above-described commercial lot x x x.

4. That the consideration of the sale is TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00), Philippine Currency paid by the plaintiffs to the defendant;

5. That the condition of said sale is that the defendant reserved the right to repurchase, within two (2) years from said date, said commercial lot and dwelling house by paying and returning unto the plaintiffs the purchase [price] of P250,000.00 stipulated in the Deed, a copy of which is hereto attached and made part hereof marked Annex "A"; that within [six] (6) months before the expiration of the date of repurchase, the defendant is under obligation to give plaintiffs written notice that she is in a position to repurchase said properties before the expiration of said period; and for failure to give such notice, the plaintiffs who are vendees-a-retro shall automatically become the absolute owners thereof upon the expiration of said period;

6. That defendant never gave written notice to plaintiffs that she was in a position to repurchase said commercial lot and dwelling house as described above; neither did defendant offer to repurchase the same upon the expiration of said period; and that after notifying the defendant that she may still repurchase said properties three months after the expiration of said period, she failed to repurchase the same;

7. That considering that the dwelling house is already an old house and has depreciated a lot, the purchase price of

the building and house indicated in the deed justly represents the fair market value of said properties;

8. That considering that the defendant failed to repurchase the dwelling house and commercial lot described in paragraph 3 hereof on or before December 3, 1976, the plaintiffs are now entitled to the consolidation of their ownership of the same.

x x x x[3]

In her Answer with Counterclaim, petitioner denied the material allegations of the Complaint and raised the following Special and Affirmative Defenses:

1 - That on December 3, 1976, the plaintiffs and the defendant entered into a contract of sale with right of repurchase over the properties mentioned and described in the deed x x x for a consideration and/or price of Two Hundred Fifty Thousand Pesos (P250,000.00), x x x;

2 - That after the plaintiffs have paid to the defendant One Hundred Fifty Thousand Pesos (P150,000.00), out of the stipulated consideration and/or price of Two Hundred Fifty Thousand Pesos (P250,000.00), the former demanded and/or required upon the latter as additional obligation to require her brother-in-law, Francisco alias Enrique alias Igme Claravall from whom the dwelling house was bought by her in 1967, to execute another deed of sale over the same dwelling house in their (plaintiffs') favor, with right of repurchase of the former;

3 - That upon the failure and/or refusal of the defendant to comply with the additional obligation imposed upon her by the plaintiffs mentioned in the next preceding paragraph, the latter also refused and/or failed to pay their balance of One Hundred Thousand Pesos (P100,000.00), to the former, although said plaintiffs, on the occasions of their refusal to pay said balance, promised to the defendant that should she win her case then pending before the Court of Appeals, involving another bigger residential lot, with a very much bigger and concrete house thereon, also situated in Centro, Ilagan, Isabela, the former shall be ready and willing to cancel the said contract of sale with right of repurchase and instead and/or in lieu thereof, to execute with the latter, another contract of sale with right of repurchase over said bigger residential lot with a bigger and concrete dwelling house thereon, for a consideration and/or price of Five Hundred Thousand Pesos (P500,000.00), in addition to the One Hundred Fifty Thousand Pesos (P150,000.00) already paid by them under the deed, x x x and for a longer period of five (5) years within which to repurchase;

4 - That when the defendant refused to agree to the promise and/or proposal of the plaintiffs mentioned in the next preceding paragraph, the latter insisted on their refusal to pay their balance of One Hundred Thousand Pesos (P100,000.00) x x x;

5 - That by reason of the refusal of the plaintiffs to pay to the defendant their balance of One Hundred Thousand Pesos (P100,000.00), and/or for having retained the same for themselves, the latter, on December 1, 1978, executed a "Cautionary Notice", addressed to the Register of Deeds and Provincial Assessor of Isabela, registering and/or manifesting her opposition to any consolidation of ownership which may be made by the plaintiffs in connection with the Deed of Sale with Right of Repurchase x x x;

6 - That considering the fact that the plaintiffs, as vendees, retained for themselves One Hundred Thousand Pesos (P100,000.00), which is a part of the consideration and/or price of the contract of sale with right of repurchase and that the defendant, as vendor, retained possession of the properties sold, the document executed by and between the parties plaintiffs and defendant on December 3, 1976, x x x, is consequently presumed to be a mere equitable mortgage;

x x x x.[4]

After the issues were joined, trial on the merits ensued.

On August 5, 1991, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiffs and against the defendant:

1. Declaring the plaintiffs to be the absolute owners of the commercial lot and dwelling house described in par. 3 of the Complaint;
2. Declaring the defendant to have waived her right to repurchase said properties;
3. Ordering the defendant to pay attorney's fees of P2,000.00; and
4. Ordering the defendant to pay costs of this suit.

SO ORDERED.[5]

Aggrieved by the judgment of the RTC, petitioner filed an appeal with the CA.

On March 18, 2002, the CA promulgated the presently assailed Decision affirming the judgment of the RTC.

Hence, the instant petition with the following assignment of errors:

A. THE RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE POSSESSION OF THE PROPERTY SUBJECT OF THE DEED OF SALE WITH RIGHT TO REPURCHASE, REMAINED WITH PETITIONER VICTORIA CLARAVALL, AS LESSOR, TO ENRIQUE CLARAVALL, AS LESSEE;

B. THE RESPONDENT COURT GRAVELY ERRED IN NOT FINDING THAT BY CLEAR INFERENCE RESPONDENTS EXTENDED THE PERIOD OF PETITIONER VICTORIA H. CLARAVALL TO EXERCISE HER RIGHT TO REPURCHASE THE PROPERTY WHICH IS THE SUBJECT OF THE DEED OF SALE WITH RIGHT TO REPURCHASE (EXHIBIT A);

C. THE RESPONDENT COURT GRAVELY ERRED IN NOT FINDING THAT BY THE UNASSAILABLE RECEIPTS, RESPONDENTS PAID ONLY ONE HUNDRED [FIFTY] THOUSAND (P150,000.00) PESOS AND REFUSED TO PAY THE BALANCE OF ONE HUNDRED THOUSAND PESOS;

D. THE RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE DEED OF SALE WITH RIGHT TO REPURCHASE (EXH. A) IS AN EQUITABLE MORTGAGE; AND

E. EVEN ASSUMING THAT EXHIBIT A IS A BONA FIDE DEED OF SALE WITH RIGHT TO REPURCHASE, THE RESPONDENT COURT SERIOUSLY ERRED IN NOT GRANTING PETITIONER VICTORIA CLARAVALL'S RIGHT TO EXERCISE HER RIGHT TO REPURCHASE WITHIN THIRTY (30) DAYS FROM THE TIME OF FINAL JUDGMENT PURSUANT TO ARTICLE 1606 OF THE CIVIL CODE.[6]

At the outset, it bears to reiterate the well-settled rule that, in a petition for review on certiorari under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court.[7] This restriction of the review to questions of law has been institutionalized in Section 1, Rule 45 of the Rules of Court, the second sentence of which provides that the petition shall raise only questions of law which must be distinctly set forth. Indeed, in the exercise of its power of review, the Court is not a trier of facts and, subject to certain exceptions,[8] which the Court finds to be absent in the instant case, it does not normally undertake the re-examination of the evidence presented by the contending parties during the trial.[9] Perforce, the findings of fact by the CA, affirming that of the RTC, are conclusive and binding on the Court.[10] In the instant case, a perusal of petitioner's first four assigned errors would readily show that the issues raised are factual in nature; thus, necessitating a review of the evidence presented by the parties. Without doubt, the following questions raised in the instant petition, to wit: (1) whether the property subject of the instant case is in the possession of petitioner; (2) whether petitioner's right to repurchase is extended; (3) whether respondents were only able to pay

a portion of the purchase price for the subject property, and (4) whether the subject deed of sale with right of repurchase is actually an equitable mortgage, are all questions of fact which are beyond the province of a petition for review on certiorari.

Even granting, *arguendo*, that the foregoing issues of fact can be validly raised in the instant petition, the Court still finds petitioner's arguments to be without merit.

Echoing her arguments raised before the CA, petitioner's bone of contention in the present petition is that the contract she entered into with respondents is an equitable mortgage, claiming that: (1) she remained in possession of the subject property; (2) her right to repurchase has not yet expired; and (3) respondents retained a portion of the purchase price. Petitioner argues that, under Article 1602 of the Civil Code,[11] these circumstances indicate that her contract with respondents is an equitable mortgage. However, the Court finds no cogent reason to depart from the findings of both the CA and the RTC that petitioner failed to substantiate her claims and that the subject contract is, in fact, one of sale with right of repurchase.

The CA correctly held as follows:

The person in actual possession of the property at the time of the execution of the deed of sale with right to repurchase was Enrique Claravall, a lessee of the dwelling unit located on the commercial lot. In the case of *Ignacio vs. CA*, the Supreme Court held the transaction between the petitioner and respondent to be a sale with a right to repurchase observing that "private respondents have not been in actual possession of the subject property. They had been leasing it out at the time the deed was executed." x x x

x x x x

The fact that plaintiff instituted the action for consolidation of ownership five months after December 3, 1978, the expiry date of the right to repurchase, should not be construed as an extension of the period for defendant to exercise her right to repurchase the subject property. Any extension for the exercise of the right to repurchase must be expressly provided in another document to give rise to the presumption of equitable mortgage, and not merely implied from any act or omission.[12]

The Court likewise quotes, with approval, the disquisition of the RTC disposing of the issue on respondents' supposed failure to pay the full amount of the purchase price, thus:

Admittedly, there is no dispute as to the existence and due execution of the Contract embodied in said Exhibits "A", "A-1" and "A-2". However, defendant [herein petitioner] anchored her evidence on the theory that although she had affixed her signature on said Deed of Sale with Right to Repurchase as could be gleaned in the aforesaid exhibits, the consideration of P250,000.00 has not yet been fully paid by plaintiffs. This argument is obviously defective and will only merit scant consideration by the Court. The circumstances obtaining in the instant case argue against such contention. The Contract is, undeniably, executed in accordance with the formalities required by law and as correctly observed by plaintiffs, its contents are clear and couched in unambiguous terms which would leave no room for interpretation. x x x

Likewise, the Court cannot just lose sight of the fact that the signature of defendant's husband Loreto Claravall, showing his marital conformity to the same, will certainly negate such claim for the balance of P100,000.00 as defendant would insist. Besides, there are two competent witnesses, namely, Gaudencio Talaue, defendant's driver herself and Estenelie B. Salvador. These witnesses could have been utilized by defendant to buttress her theory had her story been based on facts and the truth. Failing this, the Court can hardly rely on her oral claim[s] which are obviously inconclusive and incredible, if not purely conjectural. By affixing her signature therein, defendant is now estopped in plainly denying having received the whole amount as exactly stated.

Furthermore, even without going deeper into the evidence presented by the parties, defendant's theory is highly inconceivable, considering the value of the property and the big amount of money involved therewith. The

Court is not inclined to believe that a vendor-a-retro would affix her signature therein if the consideration thereof is fixed but not yet fully paid, much less if said balance as hereto claimed involves a big amount of money. Suffice it to say that had plaintiffs still under obligation to pay the balance of One Hundred Thousand (P100,000.00) Pesos, as theorized by the defendant, the latter would certainly have initiated an action to recover the balance or rescind the contract altogether. Unfortunately, not even a single proof demanding the balance, if any, was adduced by the defendant. As a matter of fact, even the letters sent by defendant to plaintiffs on June 2, 1978 and November 27, 1978 (Exhibits "4" and "5", defendant) did not mention, much less disclose, any claim to that effect other than defendant's intention to repurchase said properties.

x x x x

Concededly, while the defendant served plaintiffs written notice of her desire to repurchase said properties, defendant never made any tender of payment of the repurchase price representing the amount of the sale she received from plaintiffs at the time the contract was executed on December 3, 1976. x x x

x x x x[13]

Indeed, petitioner failed to present any competent evidence, documentary or otherwise, to prove her claim that the subject contract is an equitable mortgage and not a sale with right of repurchase. It is settled that the party alleging a fact has the burden of proving it and mere allegation is not evidence.[14] In fact, it appears from all indications that petitioner's claim of equitable mortgage is simply an afterthought subsequent to her realization that she cannot repurchase the subject property within the period stipulated in her contract with petitioners. It is plainly a ploy to resurrect a right which has already expired.

With respect to the last assigned error, the Court's discussion in *Felicen, Sr. v. Orias*, [15] as reiterated in the subsequent cases of *Heirs of Vda. de Macoy v. Court of Appeals* [16] and *Agan v. Heirs of the Spouses Andres Nueva and Diosdada Nueva*, [17] with respect to the rationale behind the provisions of Article 1606 of the Civil Code, [18] is instructive, to wit:

Article 1606 is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage but decides otherwise. The seller, however, must entertain a good faith belief that the contract is an equitable mortgage. In *Felicen, Sr., et al. v. Orias, et al.*, cited by petitioner, the Court explained:

The application of the third paragraph of Article 1606 is predicated upon the bona fides of the vendor a retro. It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with pacto de retro, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or obligation. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper: that the vendor a retro be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract to be a true sale with right to repurchase. Conversely, if it should appear that the parties' agreement was really one of sale ? transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property ? and there are no circumstances that may reasonably be accepted as generating some honest doubt as to the parties' intention, the proviso is inapplicable. The reason is quite obvious. If the rule were otherwise, it would be within the power of every vendor a retro to set at naught a pacto de retro, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract ? known to him to be in truth a sale with pacto de retro ? into an equitable mortgage. As postulated by the petitioner, "to allow herein private respondent to repurchase the property by applying said paragraph x x x to the case at bar despite the fact that the stipulated redemption period had already long expired when they instituted the present action, would in effect alter or modify the stipulation in the contract as to the definite and specific limitation of the period for repurchase (2 years from the date of sale or only until June 25, 1958) thereby not simply increasing but in reality resuscitating the expired right to repurchase x x x and likewise the already terminated and extinguished obligation to resell by

herein petitioner." The rule would thus be made a tool to spawn, protect and even reward fraud and bad faith, a situation surely never contemplated or intended by the law.

This court has already had occasion to rule on the proper interpretation of the provision in question. In *Adorable v. Inacala*, where the proofs established that there could be no honest doubt as to the parties' intention, that the transaction was clearly and definitely a sale with pacto de retro, the Court adjudged the vendor a retro not to be entitled to the benefit of the third paragraph of Article 1606.

As earlier discussed, the Court finds no error in the conclusions reached by both the CA and the RTC that the unmistakable and definite intention of petitioner and respondents was that the transaction they entered into is one of sale with right of repurchase. Hence, petitioner is not entitled to the reprieve provided for under the third paragraph of Article 1606 of the Civil Code.

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals, dated March 18, 2002 in CA-G.R. CV No. 38859, is AFFIRMED.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Abad, and Mendoza, JJ., concur.

[*] Designated as an additional member per Special Order No. 1042 dated July 6, 2011.

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Mercedes Gozo-Dadole and Juan Q. Enriquez, Jr., concurring.

[2] Penned by Judge Senen O. Casibang.

[3] Records, pp. 1-2.

[4] *Id.* at 14-16.

[5] *Id.* at 202.

[6] Rollo, pp. 28-29.

[7] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 171406, April 4, 2011; *Anita Monasterio-Pe and the Spouses Romulo and Editha Pe-Tan v. Jose Juan Tong*, herein represented by his attorney-in-fact, Jose Y. Ong, G.R. No. 151369, March 23, 2011; *Spouses Moises and Clemencia Andrada v. Pilhino Sales Corporation*, represented by its Branch Manager, Jojo S. Saet, G.R. No. 156448, February 23, 2011.

[8] (a) When the findings are grounded entirely on speculation, surmises, or conjectures;

(b) When the inference made is manifestly mistaken, absurd, or impossible;

(c) When there is grave abuse of discretion;

(d) When the judgment is based on a misapprehension of facts;

(e) When the findings of facts are conflicting;

(f) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(g) When the CA's findings are contrary to those by the trial court;

- (h) When the findings are conclusions without citation of specific evidence on which they are based;
- (i) When the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
- (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (cited in *Spouses Andrada v. Pilhino Sales Corporation*, supra).

[9] *Spouses Andrada v. Pilhino Sales Corporation*, supra note 7.

[10] *Id.*

[11] Article 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 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.

[12] *Rollo*, pp. 55-56.

[13] *Id.* at 81-83.

[14] *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171, 193; *Atienza v. De Castro*, G.R. No. 169698, November 29, 2006, 508 SCRA 593, 602.

[15] 240 Phil. 550, 553-555 (1987).

[16] G.R. No. 95871, February 13, 1992, 206 SCRA 244, 254-255.

[17] 463 Phil. 834, 843-844 (2003).

[18] Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time the final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

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