

PHILADELPHIA AGAN, PETITIONER, VS. HEIRS OF SPS. ANDRES NUEVA AND DIOSDADO NUEVA, REPRESENTED BY LOU NUEVA AND AL NUEVA, RESPONDENTS.

G.R. No. 155018. December 11, 2003

Ponente: TINGA, J.

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TINGA, J.:

Mistake, to constitute a ground for petition for relief, refers to a mistake of fact, not of law. The Court finds occasion to reiterate this basic principle in this case.

The narration of facts by the Court of Appeals is not disputed:

On April 13, 1988, Diosdada Nueva, with marital consent, sold under a pacto de retro, a parcel of land with an area of 2,033 square meters situated in Kauswagan, Cagayan de Oro City, to Philadelphia Agan for P21,000.00. The property is covered by Transfer Certificate of Title (TCT) No. 25370 and registered in the name of Spouses Andres and Diosdada Nueva.

The agreement is evidenced by a public instrument entitled "Deed of Sale under a Pacto de Retro" executed and duly signed by the late Diosdada Nueva with the marital consent of her husband, Andres Nueva, and Philadelphia Agan. The parties agreed that the Nuevas are granted the right to repurchase the property sold, within six (6) months from and after the date of the document for the same consideration of P21,000.00.

Petitioners failed to repurchase the property within the stipulated six-month period.

On July 5, 1991, upon the death of Diosdada Nueva, the property was extrajudicially partitioned where Andres sold his interest in the land in question to his daughter Ann and son Lou. Since the title to the property was allegedly lost during the fire that razed the property on March 19, 1990 where Diosdada died, title was reconstituted and subsequently transferred and registered in the name of Ann and Lou Nueva under TCT No. 63403.

On June 19, 1992, Philadelphia Agan filed a petition for consolidation of ownership against Spouses Andres and Diosdada Nueva with the Regional Trial Court (RTC), Branch 19, of Cagayan de Oro City. . . . In their answer filed on October 28, 1998, the Nuevas alleged that the pacto de retro sale was actually an equitable mortgage, the consideration for the sale being only P21,000.00 as against its Fair Market Value of P81,320.00 pursuant to Tax Declaration No. 34661.

Trial proceeded. On May 10, 2000, the RTC admitted Agan's exhibits and submitted the case for decision in view of the absence despite due notice of the Nuevas and their counsel on record. A motion for reconsideration filed by the Nuevas couple was denied. On August 3, 2000, the judgment consolidating ownership over the disputed property in favor of the vendee, Philadelphia Agan, was rendered by the trial court. However, the second paragraph of the dispositive portion gave the vendors a period of thirty [days] from receipt of the decision within which to redeem the property. The dispositive portion of the decision reads:

"WHEREFORE, based on the evidence presented, the ownership in the vendee is hereby consolidated by virtue of the failure of the vendors to redeem the property described in the Deed of Sale under Pacto de Retro

dated April 13, 1988 covered by the TCT No. T-25370 over Lot 1355-E of the Subdivision Psd 182568, being a portion of Lot 1355, Cagayan Cadastre; situated in the Barrio of Kauswagan, Cagayan de Oro City, consisting of an area of 2,033 square meters, more or less.

["]However, the vendors can still exercise the right to repurchase said property within thirty (30) days from receipt of this decision pursuant to Article 1606 and 1607 of the New Civil Code.

["]SO ORDERED."

Because of the refusal of Agan to accept the amount of P52,080.00 as redemption price, the Nuevas were constrained to consign the amount with the court.

On September 12, 2000, Philadelphia Agan filed a petition for relief from the August 3, 2000 decision. She argued that she did not find it necessary to file an appeal from the said decision considering that the grant of the third-day period to redeem the property is a mere surplusage and hence, unenforceable and illegal in view of the court's order consolidating ownership of the property in her favor. Respondent Agan prayed for the court to delete the said portion of the decision.

On October 9, 2000, the trial court rendered its questioned Order, thus:

"WHEREFORE, the decision of August 4, 2000 is hereby amended by deleting the second paragraph of the disposition thereof.

["]SO ORDERED."

On October 31, 2000, a motion for reconsideration of the above-quoted resolution was filed by the Nuevas, but the court denied the same in its resolution dated November 17, 2000.[1]

Respondent heirs filed a petition for certiorari before the Court of Appeals, contending that the RTC gravely abused its discretion in granting the petition for relief. In its Decision dated August 21, 2002, the Court of Appeals reversed the Order of the RTC and rendered judgment in favor of respondent heirs. It held that:

The remedy of a petition for relief from judgment under Rule 38 of the Rules of Civil Procedure is a remedy provided by law to any person against whom a decision or order is entered into through fraud, accident, mistake or excusable negligence. Relief is not however available when a party had another adequate remedy available to him which was either a motion for new trial or appeal from the adverse decision and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking an appeal (*Ibabao v. Intermediate Appellate Court*, 150 SCRA 76).

The ground relied upon by the private respondent in her petition for relief below the court a quo is her honest belief that the pertinent portion of the decision granting the seller a retro thirty (30) days to redeem the property is a surplusage and hence unenforceable and illegal. She relied on the assumption that since the grant of the period of redemption is an erroneous application by the lower court of Articles 1606 and 1607 of the Civil Code, the same cannot be enforced. As the trial court upheld the validity of the sale under a pacto de retro and granted her petition for consolidation of ownership over the disputed property, she did not find it necessary to appeal the second paragraph of the dispositive portion.

We do not find the circumstances of this case a proper subject of a petition for relief from the judgment of the court a quo.

The erroneous opinion of a party concerning the incorrectness of the judicial decision of the court cannot constitute a ground for a petition for relief. This, while it constitutes a mistake of the party, is not such a mistake as confers the right to the relief. This is so because in no wise has the private respondent been prevented from interposing an appeal. If a party complains of a decision as being void, then the proper remedy

is to appeal said judgment (*Air Services Cooperative v. Court of Appeals*, 293 SCRA 101).

The relief provided for under Rule 38 of the Rules is of equitable character, allowed only in exceptional cases as when there is no other available or adequate remedy. The rule is that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy of law was due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to a mistake in the mode of procedure by counsel (*Ibabao v. Intermediate Appellate Court*, 150 SCRA 76).

The failure of the private respondent to avail of the remedy of appeal within the reglementary period notwithstanding receipt of the lower court decision rendered the decision final and executory. She cannot make a complete turn around and assail the decision in a petition for relief where she had all the opportunity to correct on appeal what [she] believed to be an erroneous decision. If a litigant loses a right by sleeping on it, then with good reason may it be said that he should not be given equitable relief under [the] rules of procedure which he disdains or which he fails to take advantage of by gross negligence (*Republic v. Sandiganbayan*, 234 SCRA 529). The law helps the vigilant but not those who sleep on their rights, for time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights (*Salandanan v. Court of Appeals*, 290 SCRA 671).

Further, We do not agree with the contention of the private respondent that Article 1606 of the Civil Code does not apply in the instant case. In their answer to the petition for consolidation filed on October 22, 1998, petitioners raised the defense that the transaction between the parties was actually an equitable mortgage, considering that they remained in possession of the subject property and continued to pay the real taxes thereon. The lower court, in its August 3, 2000 decision, ruled that the transaction is one of sale under a pacto de retro, hence it acted within its authority under Article 1606 of the Civil Code in giving the petitioners thirty days as redemption period.[2]

Petitioner reiterates her argument that a mistake prevented her from filing an appeal. She believes that an appeal was unnecessary because the inclusion of the second paragraph in the RTC Order of October 9, 2000 was mere surplusage. Petitioner further submits that the Court of Appeals erred in ruling that respondents had thirty (30) days within which to redeem the property under the third paragraph of Article 1606 of the Civil Code, which states:

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

The Court, however, finds no reversible error in the foregoing discussion of the Court of Appeals.

Relief from judgment or order is premised on equity. It is granted only in exceptional cases. It is an act of grace. It is not regarded with favor.[3] For relief to be granted, the petitioner must show that the judgment or final order was entered, or the proceeding thereafter against him was taken, through fraud, accident, mistake, or excusable negligence.[4]

The mistake contemplated by Rule 38 of the Rules of Court, as the Court of Appeals correctly held, pertains generally to one of fact, not of law. In *Guevara v. Tuason & Co.*,^[5] the Court held that the "word 'mistake,' according to its signification in the act referred to, does not apply, and never was intended to apply, to a judicial error which the court in question might have committed in the trial referred to. Such errors may be corrected by means of an appeal. The act in question can not in any way be employed as a substitute for the said remedy." The Court in *Guevara* elaborated:

. . . the erroneous opinion of one of the parties concerning the incorrectness of the judicial decision of the court can not constitute grounds for the said relief. For example, the court renders judgment in a matter against the

defendant. The said defendant believes at the time that said judgment is correct and understands that an appeal would be useless and therefore he does not interpose the same. Later he believes firmly that the said judgment was incorrect, as indeed it was, and that he committed a mistake when he believed that it was correct. This, although it constitutes a mistake of the party, is not such a mistake as confers the right to the relief. This is so because in no wise has he been prevented from interposing his appeal. The most that may be said is that by reason of an erroneous interpretation of the law he believed that all recourse of appeal would be useless.

The above illustration applies equally in this case where petitioner believed that an appeal from the Decision of the RTC would be "unnecessary."

Moreover, the Court is not convinced that petitioner sincerely believed in her theory that the second paragraph of the dispositive portion of the RTC decision was surplusage. Had it been so, she would have moved to rectify the alleged error immediately, not after respondents had offered to repurchase the property in question. Her failure to file a motion for reconsideration or to appeal before the lapse of the reglementary period constitutes an acceptance of the trial court's judgment, and her rationalization now appears to have been made only on hindsight.

Petitioner submits that the RTC had no jurisdiction to allow the respondents to repurchase the property, such judgment purportedly being contrary to prevailing jurisprudence. This contention has no merit. If there were any error at all in the Decision of the RTC, the same would be a mere error in judgment, not one of jurisdiction.

Petitioner likewise invokes the case of *Ilacad v. Court of Appeals*,^[6] holding that:

. . . a judgment, even after it had become final, where there is an ambiguity caused by an omission or mistake in the dispositive portion, the court may clarify such ambiguity, mistake or omission by an amendment and in so doing it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision.^[7]

There is no ambiguity at all in the decision that would warrant clarification. If at all, the ambiguity is merely ostensible. At first blush, the dispositive portion of the RTC Decision declaring the consolidation of ownership of the property in petitioner, on one hand, and granting respondents thirty (30) days to repurchase the property, on the other, appears inconsistent. The dispositive portion, however, also makes reference to the third paragraph of Article 1606 of the New Civil Code. Taken together, it becomes obvious that the consolidation of the property in petitioner is subject to the suspensive condition of respondents' failure to repurchase within the thirty-day period.

At any rate, the grant of the right to repurchase to respondents is in accordance with the third paragraph of Article 1606, a provision not found in the old Civil Code. The legislative intent behind this Article, along with Articles 1602-1605 and 1607 of the same Code, is "to accord the vendor a retro the maximum safeguards for the protection of his legal rights under the true agreement of the parties. Experience has demonstrated too often that many sales with right to repurchase have been devised only to circumvent or ignore our usury laws and for this reason, the law looks upon them with disfavor."^[8]

Article 1606 is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage but decides otherwise.^[9] 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.*,^[10] 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 and likewise the already terminated and extinguished obligation to resell by herein petitioner." The rule would thus be a 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.[11]

The RTC in this case made no finding in its Decision that respondents' defense that the pacto de retro sale was an equitable mortgage was not made in good faith. Indeed, it does not appear that petitioner even attempted to prove bad faith on the part of respondents during the trial, which accounts for the RTC Decision's utter silence on the matter.

Moreover, respondents alleged in their answer that the consideration for the alleged sale, which was P21,000.00 was inadequate, considering that the fair market value of the property was P81,320.00.[12] Respondents also averred that they remained in possession of the subject property and paid the real taxes thereon, and that their predecessor continued to pay the loan under which the mortgage was constituted.[13] Respondents even reconstituted their title over the property, and partitioned the property with the other heirs, after which respondents purchased the latter's share and caused the issuance of a Transfer Certificate of Title in their name.[14] Such title, however, was subsequently annulled.

The law presumes good faith and, in the absence of a contrary finding by the RTC in its Decision, respondents are entitled to the right to redeem the property pursuant to the third paragraph of Article 1606 of the New Civil Code.

The Court also notes that the RTC erred in allowing petitioners the right to repurchase said property within thirty (30) days from receipt of the RTC Decision. By express provision, Article 1606 grants the vendor a retro thirty (30) days "from the time final judgment was rendered," not from the defendant's receipt of the judgment. The Court has construed "final judgment" to mean one that has become final and executory.[15]

This observation, of course, is moot, as it is not disputed that respondents offered to pay petitioner the redemption price within the period fixed by the trial court and, subsequently, consigned the amount in court. The Court makes the observation only for the enlightenment of the RTC.

ACCORDINGLY, the Court Resolves to DENY the petition for lack of merit.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Rollo, pp. 40-42.

[2] Id., at 44-45.

[3] *Dirige v. Baranya*, 124 Phil. 269 (1969).

[4] RULES OF COURT, rule 38, sec. 1.

[5] 1 Phil. 27 (1901). See also, *Robles, et al. v. San Jose, et al.*, 99 Phil. 658 (1956), citing *Catala v. Monteverde*, 63 Phil. 503, 509.

[6] No. L-4435, August 26, 1977, 78 SCRA 301.

[7] Id., at 307.

[8] *Tacodoro v. Arcenas*, 110 Phil. 222 (1960), citing Report of the Code Commission, pp. 63-64.

[9] *Feria, et al. v. Suva*, 92 Phil. 963 (1953), citing IV Capistrano on the Civil Code, p. 1507.

[10] L-33182, December 18, 1987, 156 SCRA 586. See also *Vda. de Macoy v. Court of Appeals*, G.R. No. 95871, February 13, 1992, 206 SCRA 244.

[11] Id., at 589-591.

[12] Rollo, p. 167.

[13] Ibid.

[14] Ibid.

[15] *Perez, et al. v. Zulueta*, 106 Phil. 264 (1959).

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