DOMINGO R. LUMAYAG AND FELIPA N. LUMAYAG, PETITIONERS, VS. HEIRS OF JACINTO NEMEÑO AND DALMACIA DAYANGCO-NEMEÑO, REPRESENTED BY MELITON NEMEÑO, RESPONDENTS.

G.R. NO. 162112. July 03, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Challenged and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court is the decision[1] dated September 30, 2003 of the Court of Appeals (CA), as reiterated in its resolution[2] of January 9, 2004 in CA-G.R. CV No. 63230, affirming, with modification, an earlier decision of the Regional Trial Court (RTC) of Ozamiz City which ruled that the instrument entitled Deed of Sale with Pacto De Retro executed in favor of the herein petitioners by the respondents is actually an equitable mortgage.

The facts:

During their lifetime, the spouses Jacinto Nemeño and Dalmacia Dayangco-Nemeño, predecessors-in-interest of the herein respondent heirs, owned two (2) parcels of coconut land located in Manaca, Ozamiz City. The parcels are: Lot No. 4049, with an area of five (5) hectares and covered by Original Certificate of Title (OCT) No. 0-1743 and Lot No. 4035 C-4, consisting of 4,420 square meters and covered by Tax Declaration No. 13750.

In 1979, Dalmacia died survived by her husband, Jacinto, and their six (6) children, to wit: Meliton, Eleuteria, Timoteo, Justo, Saturnino (now deceased) and Felipa.

On February 25, 1985, Jacinto, joined by his five (5) children, namely, Meliton, Eleuteria, Timoteo, Justo and Saturnino, conveyed to his daughter Felipa and the latter's husband Domingo Lumayag the aforementioned Lot Nos. 4049 and 4035 C-4. The instrument of conveyance is denominated as Deed of Sale with Pacto De Retro.[3] Thereunder, it was stipulated that the consideration for the alleged sale of the two (2) aforementioned lots was Twenty Thousand Pesos (P20,000.00) and that the vendors a retro have the right to repurchase the same lots within five (5) years from the date of the execution of the instrument on February 25, 1985. It was likewise agreed thereunder that in the event no purchase is effected within the said stipulated period of five (5) years "conveyance shall become absolute and irrevocable without the necessity of drawing up a new absolute deed of sale, subject to the requirements of law regarding consolidation of ownership of real property."

On April 4, 1985, Jacinto died while undergoing treatment at the MHARS General Hospital in Ozamiz City.

More than a decade later, or on August 28, 1996, the spouses Domingo Lumayag and Felipa Nemeño-Lumayag filed with the RTC of Ozamiz City a petition for the reconstitution of the owner's duplicate copy of OCT No. 0-1743 covering Lot No. 4049, one of the two lots subject of the earlier Deed of Sale with Pacto De Retro. In that petition, the Lumayags alleged that said owner's duplicate copy of OCT No. 0-1743 was in Domingo's possession but the same was lost when a typhoon hit and destroyed the couple's house in Talisay, Cebu on November 12, 1990. The petition was opposed by the other heirs of Jacinto and Dalmacia who claimed that the owner's duplicate

copy of the same OCT was actually in the possession and custody of their brother Meliton Nemeño, the administrator of the property, when it was burned in a fire on May 22, 1992. In an order dated December 20, 1996,[4] the RTC resolved said petition by ordering the issuance of a new owner's duplicate copy of OCT No. 0-1743 and its delivery to the heirs of Jacinto and Dalmacia.

Such were the state of things when, on December 24, 1996, in the same RTC, the heirs of Jacinto and Dalmacia, namely, their children Meliton, Eleuteria, Timoteo and Justo and grandchildren Ricky and Daisy who are the heirs of Saturnino, (hereinafter collectively referred to as the respondent heirs) filed against the spouses Domingo Lumayag and Felipa N. Lumayag a complaint[5]for Declaration of Contract as Equitable Mortgage, Accounting and Redemption with Damages. In their complaint, docketed in the trial court as Civil Case No. 96-69 and raffled to Branch 35 thereof, the plaintiff heirs prayed that the Deed of Sale with Pacto De Retro executed on February 25, 1985 in favor of the defendant spouses Domingo Lumayag and Felipa N. Lumayag over Lot Nos. 4049 and 4035 C-4 be declared as an equitable mortgage and considered as already redeemed, with accounting and damages.

Essentially, the complaint alleged that the subject Deed of Sale with Pacto De Retro was executed only for the purpose of securing the payment of a loan of P20,000.00 obtained from the defendant spouses in connection with the medication and hospitalization of the then ailing Jacinto Nemeño. To support their claim that the contract in question was an equitable mortgage, the plaintiff heirs materially pointed out the following: (1) the grossly inadequate price of the subject lots considering that Lot No. 4049 with an area of 5 hectares has a market value of P40,760.00 and an assessed value of P15,230.00, as shown by Tax Declaration No. 94-07335-A, while Lot No. 4035 C-4 with an area of 4,420 square meters has a market value of P4,120.00 and an assessed value of P1,460.00, per Tax Declaration No. 94-07355-A; (2) their (plaintiffs') continued payment of realty taxes; (3) the land title and tax declaration remained in the names of Jacinto Nemeño and Dalmacia Dayangco-Nemeño; (4) their possession, particularly Justo Nemeño's, of the subject lots with the petitioner spouses only given two-thirds share of the harvest therefrom; and (5) the pactum commissorium stipulation in the subject contract. Thus, the heirs pray for a judgment (a) declaring the subject Deed of Sale with Pacto de Retro as an equitable mortgage and considering the lots subject thereof as redeemed; (b) ordering the defendant spouses to render an accounting of the fruits and/or income of the coconut lands from 1985 to 1996 and to return whatever remains of the amount with interest at the legal rate after deducting the P20,000.00 loan; and (c) ordering the same defendants to pay litigation expenses and attorney's fees.

In their Answer,[6] the spouses Lumayag denied that the contract in question was an equitable mortgage and claimed that the amount of P20,000.00 received by the plaintiff heirs was the consideration for the sale of the two lots and not a loan. By way of affirmative defenses, the spouses Lumayag asserted that the action was already barred by laches and prescription and the complaint itself states no cause of action.

With the pre-trial conference having failed to bring the parties to any amicable settlement, trial on the merits ensued.

Eventually, in a decision[7] dated February 3, 1999, the trial court adjudged the subject Deed of Sale with Pacto De Retro as an equitable mortgage and ordered the defendant spouses to reconvey Lot Nos. 4049 and 4035 C-4 to the plaintiff heirs for P20,000.00. We quote the fallo of the decision:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered to wit:
>
> - Declaring the Deed of Sale with Pacto de Retro marked annex "A" to the Complaint as equitable mortgage;
>
> - Ordering the defendants to reconvey the properties in litigation to the plaintiffs in the amount of P20,000.00 within 30 days after the decision has become final and executory;

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- Ordering the defendants to pay the cost of this suit.

SO ORDERED.

Dissatisfied, both parties appealed to the CA. Unfortunately, for failure of the plaintiff heirs to submit their appeal brief, their appeal was dismissed, leaving that of the defendant spouses which was docketed as CA-G.R. CV No. 63230.

As stated at the threshold hereof, the appellate court, in its Decision of September 30, 2003, affirmed that of the trial court but with the modification that the mortgaged properties are subject to foreclosure should the respondents fail to redeem the same within thirty (30) days from finality of the decision. More specifically, the CA decision dispositively reads:

> WHEREFORE, premises considered, the Decision dated February 3, 1999 rendered by the Regional Trial Court, Branch 35, Ozamiz City in Civil Case No. 96-69 is hereby AFFIRMED with MODIFICATION, in that [petitioners] could foreclose the mortgaged properties in the event [private respondents] fail to exercise their right of redemption within thirty (30) days from the finality of this decision.
>
> SO ORDERED. (Words in brackets supplied.)

Explains the CA in its decision:

> xxx xxx xxx
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> In the instant case, we hold that the deed of sale with pacto de retro is actually an equitable mortgage. For one, the supposed price for the sale with pacto de retro in the amount of P20,000.00 is unusually inadequate for the two (2) parcels of land, the total area of which is almost 5.5 hectares. Also, [respondents heirs] remained in possession of the subject properties even after the execution of the subject instrument. Not only did [respondent heirs] retain possession of the subject properties, they also paid for the realty taxes of the same. Indeed, as the trial court found the transaction was one of an equitable mortgage,
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> Finally, the subject instrument provides that if the vendors a-retro, herein plaintiffs-appellants, fails to exercise their right to redeem or repurchase the subject properties within the period stipulated upon, then the conveyance shall be deemed to be an absolute and irrevocable sale, without the necessity of executing any further deed. Such stipulation is void for being a pactum commissorium. xxx
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> Having ruled that the instrument executed by the parties is one of an equitable mortgage, [respondent heirs] can now redeem the mortgaged properties from [petitioner spouses] within thirty (30) days from finality of this decision. Otherwise, [petitioner spouses] would be given the option to foreclose the mortgaged properties, for as a rule, in a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation. xxx. (Words in brackets supplied).

With their motion for reconsideration having been denied by the appellate court in its equally impugned Resolution of January 9, 2004, petitioners are now with this Court via the instant recourse on their submission that:

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> HON. COURT OF APPEALS GRAVELY ERRED IN NOT REVERSING THE DECISION OF THE TRIAL COURT AND DISMISSING THE PRIVATE RESPONDENTS' COMPLAINT ON GROUNDS OF LACHES AND OR PRESCRIPTION.
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> II

HON. COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE DEED OF SALE WITH PACTO DE RETRO IS ACTUALLY AN EQUITABLE MORTGAGE.

III

THE DECISION RENDERED BY THE HON. COURT OF APPEALS IS NOT SUPPORTED BY THE EVIDENCE AND CONTRARY TO LAW.[8]

We DENY.

Petitioners initially put the CA to task for not dismissing the case considering that the titles to the subject parcels of land had already been consolidated to them by operation of law because the five (5)-year prescriptive period for the respondents to repurchase expired in 1990.

Under a pacto de retro sale, title to and ownership of property are immediately vested in the vendee a retro, subject only to the resolutory condition that the vendor repurchases it within the stipulated period.[9] The failure of the vendor a retro to repurchase the property vests upon the vendee a retro by operation of law the absolute title and ownership over the property sold.[10]

Here, there is no issue as regards the fact that the subject Deed of Sale with Pacto De Retro provided for a 5-year redemption period which expired on February 25, 1990. Evidently, then, the failure of the respondent heirs to redeem the properties within the stipulated period indubitably vested the absolute title to and ownership thereof to the petitioners. But such consequence would only be true if the contract that was executed between the parties was indeed a pacto de retro sale and not an equitable mortgage.

The two (2) courts below unanimously found that the subject Deed of Sale with Pacto De Retro, while purporting to be a sale, is in truth and in fact an equitable mortgage. Such factual finding, more so when supported by the evidence, as here, commands not only respect but even finality and is binding on this Court.[11]

An equitable mortgage has been defined "as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law."[12]

Article 1602 of the Civil Code enumerates the instances when a contract, regardless of its nomenclature, may be presumed to be an equitable mortgage, to wit:

(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 case, 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.

Article 1604 of the Civil Code provides that the provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale, and, in case of doubt, a contract purporting to be a sale with right to repurchase

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shall be construed as an equitable mortgage.[13]

The law requires the presence of any one and not the concurrence of all of the circumstances enumerated under Article 1602, supra, to conclude that the transaction is one of equitable mortgage. So it is that in Socorro Taopo Banga v. Sps. Jose and Emeline Bello,[14] this Court, citing Aguirre v. CA,[15] unequivocally ruled:

> The presence of even one of the circumstances in Article 1602 is sufficient basis to declare a contract as one of equitable mortgage. The explicit provision of Article 1602 that any of those circumstances would suffice to construe a contract of sale to be one of equitable mortgage is in consonance with the rule that law favors the least transmission of property rights. To stress, the existence of any one of the conditions under Article 1602, not a concurrence, nor an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract is an equitable mortgage. (Emphasis ours)

Here, the CA correctly found the presence of not merely one but four (4) circumstances indicative of the true nature of the subject transaction as an equitable mortgage, to wit: (a) gross inadequacy of the contract price of P20,000.00 for two (2) parcels of land, the total area of which is almost 5.5 hectares; (b) respondent heirs remained in possession of the subject property even after the execution of the supposedly Deed of Sale with Pacto de Retro; (c) said respondents' payment of realty taxes; and (d) the provision on pactum commissorium.

While we are not in full accord with the CA in its observation that the consideration of the sale with right to repurchase is grossly inadequate since the market value and assessed value of the two lots were not made on or before the date the subject contract was executed on February 25, 1985 but only on June 8, 1994, still, there are other circumstances convincing enough to support a conclusion that the transaction in question is really an equitable mortgage.

Evidence is extant on record that the respondent heirs, as vendors a retro, remained in possession of the subject lots after the execution of the deed of sale with right to repurchase. In stark contrast, evidence is wanting that petitioners ever enjoyed possession thereof. If the transaction was really a sale with right to repurchase, as claimed by the petitioners, then the latter should have asserted their rights for the immediate delivery of the lots to them instead of allowing some of the respondents to freely stay in the premises. 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.[16]

As well, that the parties intended to enter into an equitable mortgage is further accentuated by respondents' continued payment of the real property taxes subsequent to the alleged sale. Payment of those taxes is a usual burden attached to ownership and when, as here, such payment is coupled with continuous possession of the property, it constitutes evidence of great weight that a person under whose name the realty taxes were declared has a valid and rightful claim over the land.[17]

Lastly, the stipulation in the subject deed reading: "if we fail to exercise our rights to repurchase as herein granted within the period stipulated, then this conveyance shall become absolute and irrevocable without the necessity of drawing a new absolute Deed of Sale, subject to the requirements of law regarding consolidation of ownership of real property," - is considered a pactum commissorium. This stipulation is contrary to the nature of a true pacto de retro sale since in such sale, 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.[18] Undoubtedly, the aforementioned stipulation is a pactum commissorium because it enables the mortgagee to acquire ownership of the mortgaged properties without need of any foreclosure proceedings which is a nullity being contrary to the provisions of Article 2088[19] of the Civil Code. Indeed, the inclusion of such stipulation in the deed shows the intention to mortgage rather than to sell.

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WHEREFORE, the instant petition is DENIED, and the assailed decision and resolution of the CA in CA-G.R. CV No. 63230 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, and Azcuna, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1]Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Roberto A. Barrios (deceased) and Arsenio J. Magpale, concurring; rollo, pp. 52-59.

[2]Id. at 23.

[3] Original Records, pp. 163-164.

[4] Id. at 156.

[5]Id. at 1-5.

[6]Id. at 16-19.

[7]Id. at 209-223.

[8] Id. at 28-29.

[9] Vda. de Rigonan et al. v. Zoroaster Derecho representing the Heirs of Ruben Derecho et al., G.R. No. 159571, July 15, 2005, 463 SCRA 627, 636.

[10] Luis Misterio et al. v. Cebu State Colleg of Science and Technology, G.R. No. 152199, June 23, 2005, 461 SCRA 122.

[11] Gregorio Amante v. Vicente Serwelas, G.R. No. 143572, September 30, 2005, 471 SCRA 348.

[12] Benny Go v. Eliodoro Bacaron, G.R. No. 159048, October 11, 2005, 472 SCRA 339, 347.

[13]Article 1603, Civil Code.

[14]G.R. No. 156705, September 30, 2005, 471 SCRA 653, 663-664.

[15] G.R. No. 131520, January 28, 2000, 323 SCRA 771, 775.

[16] Bernice Legaspi v. Spouses Rita and Francisco Ong, G.R. No. 141311, May 26, 2005, 459 SCRA 122.

[17] Go v. Bacaron, supra at p. 352.

[18] Bernice Legaspi v. Spouses Rita and Francisco Ong, supra at p. 144.

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

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