

**MARCELINO REPUELA AND CIPRIANO REPUELA, SUBSTITUTED BY
CARMELA REPUELA, MERLINDA R. VILLARUEL, WILLIAM REPUELA,
ROSITA P. REPUELA, CRISTINA R. RAMOS, ORLANDO REPUELA,
JUNNE REPU...**

G.R. No. 219638. December 07, 2016

Ponente: MENDOZA, J.

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MENDOZA, J.:

This Petition for Review on Certiorari under Rule 45 of the Rules of Court assails the May 29, 2014 Decision[1] and the June 10, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 03976, which reversed and set aside the February 23, 2011 Decision[3] of the Regional Trial Court (RTC), Seventh Judicial Region, Branch 7, Cebu City, in Civil Case No. CEB-28524, a case for Annulment of Documents, Quieting of Title, Redemption, Damages, and Attorney's Fees.

The Antecedents

Spouses Lorenzo and Magdalena Repuela owned Lot No. 3357 (subject property), situated in Lawaan III, Talisay City, Cebu, and covered by Transfer Certificate of Title (TCT) No. 5154. After they had passed away, their children Marcelino Repuela (Marcelino) and Cipriano Repuela (Cipriano) succeeded them as owners of the subject property.[4]

Cipriano and Marcelino (Repuela brothers) claimed that sometime in July 1963, after the death of their parents, they went to the house of Otillo Larawan (Otillo) to borrow P200.00 for Marcelino's fare to Iligan City; that to secure the loan, the spouses Otillo and Juliana Larawan (Spouses Larawan) required them to turn over the certificate of title for Lot No. 3357; that they were made to sign a purported mortgage contract but they were not given a copy of the said document; that Cipriano affixed his signature while Marcelino, being illiterate, just placed his thumb mark on the document; that they remained in possession of the land despite the mortgage and had been planting bamboos, corn, bananas, and papayas thereon and sharing the produce between them; and that they also paid the taxes due on the property.[5]

In October 2002, as recalled by Cipriano's daughter, Cristina Repuela Ramos (Cristina), she went to the City Treasurer's Office of Talisay City, upon the request of her father, to verify whether Spouses Larawan were paying the realty taxes on the mortgaged property. She learned that Spouses Larawan did not pay the taxes and the tax declaration on the subject property was already in their names as early as 1964; that in the Registry of Deeds of Cebu, TCT No. 5154 was already cancelled and a new certificate of title, TCT No. 10506, had been issued to Otillo; that Spouses Larawan were able to transfer the certificate of title to their names by virtue of the Extajudicial Declaration of Heirs and Sale bearing the signature of her father Cipriano and the thumb mark of her uncle Marcelino; and that her father and uncle remembered that they were made to sign a blank document.

On January 17, 2003, Cipriano and Marcelino, on account of this predicament, were compelled to file a complaint

before the RTC for the annulment of the Extradjudicial Declaration of Heirs and Sale and the cancellation of TCT No. 10506. During the trial, Catalina Burlas (Burlas), who lived next to the subject property, and Alma Abellanosa (Abellanosa), City Assessor of Talisay City, were also presented as witnesses for the Repuela brothers.[6]

Burlas testified that the Repuela brothers confided in her about Marcelino's desire to go to Iligan City but they had no money for his fare; that another neighbor referred the Repuela brothers to Otillo, who could lend them P200.00 but only upon the signing of a deed of mortgage and the surrender of the certificate of title as collateral; that Marcelino was able to leave for Iligan but he came back after three months to help Cipriano in cultivating the land; that she did not see any other person till the land except the Repuela brothers; and that she could not recall a time when Otillo, whom she personally knew, ever visited or cultivated the subject property.[7]

Abellanosa, as City Assessor, stated that based on the records of her office, Lot No. 3357 was declared for taxation purposes for the first time in 1961 when Tax Declaration No. 12543 was issued in the name of Lorenzo Repuela; that in 1964, Tax Declaration No. 24112 was issued in the name of Spouses Larawan on the basis of a deed of sale; and that the subsequent tax declarations had Spouses Larawan as the owners.[8]

For the Estate of Spouses Larawan, on the other hand, the transaction between the Repuela brothers and Otillo was a sale and not a mortgage of a parcel of land. The Estate also invoked laches on the part of the Repuela brothers for failing to file a complaint during the lifetime of Spouses Larawan. Galileo Larawan (Galileo), son of Spouses Larawan and the sole witness for the Estate, testified that he knew of the transaction between his father and the Repuela brothers because his father brought him along to the office of Atty. Celestino Bacalso (Atty. Bacalso), where the document entitled Extradjudicial Declaration of Heirs and Sale was prepared; that the said document was signed by Cipriano and thumbmarked by Marcelino which was witnessed by Hilario Bacalso and Fernando Abellanosa; that he witnessed the Repuela brothers affix their signature and thumbmark after Atty. Bacalso read and explained to them the contents of the document in the Cebuano dialect; that after the document was notarized, his father handed P2,000.00 to the Repuela brothers as consideration for the sale; and that he was only six (6) years old when these all happened.[9]

Galileo also pointed out that the new certificate of title, TCT No. 10506, in the name of Spouses Larawan, was issued by the Register of Deeds on August 20, 1963; that his mother paid the real estate taxes during her lifetime and, after her death, he himself made the payments; that he secured the tax declaration for the subject property from the office of the Talisay City Assessor; that their family had been in possession of the subject property and they had harvested and enjoyed the produce of the land such as bamboos, jackfruit and 100 coconut trees; and that there were no other persons claiming ownership over the land, as the Repuela brothers never offered to redeem the subject property from their family.[10]

The Ruling of the RTC

After the trial, the RTC decided in favor of the Repuela brothers. It held that the transaction between the parties was not a sale but an equitable mortgage. The testimony of Galileo for the respondent, who was admittedly just six (6) years old then, was "likely colored by the lens of adult perspective and self-interest." It believed the claim of Cipriano, who only had the benefit of a Grade One education, and the illiterate Marcelino, that they merely signed a document without knowing its nature. The trial court gave more credence to the claim of possession of the Repuela brothers because the same was affirmed by a disinterested person, Burlas, who had been living in the area since she was small and whose lot adjoined the subject property. According to her, only Cipriano and Marcelino cultivated the land and she never saw anyone, not even Otillo, work on the land.[11]

Moreover, it was the trial court's opinion that the evidence of possession weighed more on the side of the Repuela

brothers than that of the Estate of Spouses Larawan. Their assertion of possession was bolstered by the fact that they too paid taxes on the property, an indication that they were still in possession of the subject property. Considering that they still possessed the subject property even after the execution of the sale, in the concept of an owner and continued paying the land taxes thereon, the RTC was of the view that the contract, entered into by the Repuela brothers and Otillo, was an equitable mortgage under Article 1602 of the Civil Code.[12] Thus, the RTC disposed:

Hence, the Court:

1. Declares the sale in the document, "Extrajudicial Declaration of Heirs and Sale," signed by Cipriano and Marcelino Repuela in favor of Otillo Larawan and spouse on July 1, 1963, as in effect an equitable mortgage;
2. Gives Cipriano and Marcelino Repuela thirty (30) days from the finality of this decision to redeem the property in the amount of Two Thousand Pesos (P2,000.00), with interest at the legal rate computed from the date of the filing of the Complaint; and
3. Directs defendants to pay plaintiffs:
 - a. P20,000.00, as attorney's fees, and
 - b. P20,000.00, as litigation expenses.

Costs are assessed against the defendants.

SO ORDERED.[13]

Not in conformity, the Estate of Spouses Larawan appealed the case to the CA.

The Ruling of the CA

On May 29, 2014, the CA reversed and set aside the February 23, 2011 Decision of the RTC for the following reasons:

1. The Repuela brothers failed to present any direct and positive proof to rebut the presumption of the document's due execution. They failed to prove any factual circumstance to point that the transaction covered therein was one of mortgage, or at the least, that such was their intention;
2. The Repuela brothers had not proven continued possession of the subject property which would have given the impression that it was not sold but merely mortgaged;
3. None of the enumerated circumstances in Article 1602 of the Civil Code was present in order for the presumption of equitable mortgage to apply. Contrary to the factual finding of the trial court, the evidence did not show that they were still in possession of the property even after the execution of the document and that they continued paying the taxes on the property immediately after the execution of the deed; and,
4. Granting arguendo that the transaction was a mortgage, their cause of action was already barred by laches as 39 years had already elapsed before they asserted their rights over the subject property.[14]

The decretal portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED. The February 23, 2011 Decision of the RTC Branch 7 of Cebu City in Civil Case No. CEB-28524 is REVERSED and SET ASIDE and the complaint for Annulment of Documents, Quieting of Title, Redemption, Damages and Attorney's Fees is DISMISSED.

SO ORDERED.[15]

After their motion for reconsideration was denied by the CA in its Resolution, dated June 10, 2015, the heirs of

the Repuela brothers (petitioners) filed the subject petition.

Issue

Whether the Extrajudicial Declaration of Heirs and Sale amounted to an equitable mortgage.

Petitioners explain that the Repuela brothers only filed the case in 2003 because they found no urgency to file it as there were no indications that their title and possession over the subject property were threatened. They claim that their predecessors-in-interest were in peaceful, open, continuous, and public possession as owners of the subject property from the time of the transaction in 1963 until the time when they decided to partition their property and learned, in the process, that the tax declaration and title of their lot were already transferred in the name of Spouses Larawan. They argue that considering that they, who were claiming to be the owners thereof, were in actual possession of the property, their right to seek reconveyance, which in effect sought to quiet the title to the property, never prescribed.[16]

Petitioners further argue that the existence of the Extrajudicial Declaration of Heirs and Sale was not enough proof that the Repuela brothers really intended to sell the property, and that the stipulations in the contract should be construed together with the parties' contemporaneous and subsequent acts as regards the execution of the contract. The same was true with the issuance of a new owner's TCT in favor of Spouses Larawan. It neither imports conclusive evidence of ownership nor proves that the agreement between the parties was one of sale. A conveyance by registration in the name of the transferee and the issuance of a new certificate is not secured from the operation of the equitable doctrine, to the effect that any conveyance intended as security for a debt would be held in effect to be a mortgage, than most informal conveyance that could be devised.[17]

The CA, according to petitioners, should have given more credence to the testimonies of the Repuela brothers, as corroborated and affirmed by the disinterested witness, Burlas, over that of Galileo, the lone witness for the respondent. As correctly observed by the trial court, Galileo was just six (6) years old when he supposedly witnessed the alleged transaction in the office of Atty. Bacalso, and so he could not have possibly known the nature of the executed contract. Echoing the RTC, they pointed out that a six-year old boy's curiosity and concerns could not have extended to things of this nature and that his recollection of events was likely colored by the lens of adult perspective and self-interest, as Galileo himself admitted that he did not read the document.[18]

Finally, they stress that the Repuela brothers remained in possession of the subject property even after the transaction and they also paid the taxes thereon for the years 1985 to 2002 on December 18, 2002. These circumstances surrounding the transaction entered into by and between the Repuela brothers and Otillo would naturally lead anyone to infer that this instance was espoused in Article 1602 of the Civil Code. This is in line with jurisprudence consistently holding that the presence of one, and not the confluence of several circumstances, is sufficient to prove that a contract of sale is one of an equitable mortgage.[19]

The Position of Respondent

In its Comment,[20] dated December 28, 2015, respondent Estate of Spouses Larawan (respondent) averred that the extrajudicial settlement and sale executed by the parties could not be presumed as an equitable mortgage. First, the said contract was "not a sale with right to repurchase" and the price of the sale was not unusually inadequate. Second, there is no documentary evidence that would support the claim of possession by the Repuela brothers, as lessee or otherwise, continuously from the execution of the document of sale until the filing of the case. Third, the third situation (when upon or after the expiration of the right to repurchase, another instrument extending the period of redemption or granting a new period was executed) wherein a contract shall be presumed

to be an equitable mortgage is not applicable in the instant case. The Extrajudicial Declaration of Heirs and Sale did not provide for a right to repurchase. As such, there was no period of redemption to be extended or a new period to be executed. Fourth, there was no showing that Otillo, as purchaser, retained for himself a part of the purchase price. He paid the amount of P2,000.00 as sale consideration to the Repuela brothers.[21] Fifth, there was no agreement in the contract of sale that the Repuela brothers, as vendors, bound themselves to pay the taxes on the thing sold. And finally, the Extrajudicial Declaration of Heirs and Sale was quite clear and specific that what was involved was a sale of the subject property. From the terms of the contract, no inference could be made that the real intention of the parties was to secure the payment of a debt or the performance of any other obligation.

The Court's Ruling

The Court finds merit in the petition.

An equitable mortgage is one which, although lacking in some formality, or form, or words, or other requisites demanded by a statute, reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law.[22]

For a presumption of an equitable mortgage to arise, two requisites must first be satisfied, namely: that the parties entered into a contract denominated as a contract of sale and that their intention was to secure an existing debt by way of mortgage.[23] There is no single conclusive test to determine whether a deed of sale, absolute on its face, is really a simple loan accommodation secured by a mortgage. Article 1602, in relation to Article 1604 of the Civil Code, however, enumerates several instances when a contract, purporting to be, and in fact styled as, an absolute sale, is presumed to be an equitable mortgage. Thus:

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 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.

xxx

ART. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.
[Emphases and underscoring supplied]

Evident from Article 1602, the presence of any of the circumstances set forth therein suffices for a contract to be deemed an equitable mortgage. No concurrence or an overwhelming number is needed.[24] In other words, the fact that some or most of the circumstances mentioned are absent in a case will not negate the existence of an equitable mortgage.

In this case, it appears that two (2) instances enumerated in Article 1602 — possession of the subject property and inference that the transaction was in fact a mortgage attended the assailed transaction.

Possession as Lessee or
otherwise

Article 1602 (2) of the Civil Code provides that when the supposed vendor remains in possession of the property even after the conclusion of the transaction, the purported contract of sale is presumed to be an equitable mortgage. In general terms, possession is the holding of a thing or the enjoyment of a right, whether by material occupation or by the fact that the right is subjected to the will of the claimant. The gathering of the products of and the act of planting on the land constitute occupation, possession and cultivation.[25]

In this case, petitioners insist that the Repuela brothers remained in possession of the subject property after the transaction, as was corroborated by a disinterested person, Burlas, who lived in the adjoining lot from the time she was a child. According to her, it was only the Repuela brothers who tilled the land and planted corn, bananas and camote. She never saw Otillo, whom she also knew, till or work on the land.

The respondent's claim of possession, as supported by a transfer certificate of title and tax declaration of the subject property, both in the name of Spouses Larawan is, to the Court's mind, not persuasive. These documents do not prove actual possession. They do not rebut the overwhelming evidence of the Repuela brothers that they were in actual possession. The fact of registration in the name of Spouses Larawan does not change the picture. A conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be devised. In an equitable mortgage, title to the property in issue, which has been transferred to the respondents actually remains or is transferred back to the petitioner as owner-mortgagor, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor pursuant to Article 2088, of the Civil Code.[26]

Inference can be made
that the transaction was
an equitable mortgage

From the attending circumstances of the case, it can be inferred that the real intention of the Repuela brothers was to secure their indebtedness from Spouses Larawan. They needed money for Marcelino's fare so they went to the house of Otillo to borrow P200.00. Considering that Spouses Larawan would only agree to extend the loan if they would surrender their certificate of title over the subject property, they obliged in the belief that its purpose was only to secure their loan. In other words, they surrendered the title to Spouses Larawan as security to obtain the much needed loan. It was never their intention to sell the subject property.

As held in *Banga v. Sps. Bello*,[27] in determining whether a deed, absolute in form, is a mortgage, the court is not limited to the written memorials of the transaction. "The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, 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." [28]

There is a presumption of
mistake

Granting that indeed Cipriano and Marcelino, signed and thumbmarked, respectively, the Extrajudicial

Declaration of Heirs and Sale, there is still reason to believe that they did so without understanding the real nature, effects and consequences of what they did as they were never explained to them. Cipriano, who only finished Grade One, and Marcelino, an illiterate, were in dire need of money. As such, the possibility that they affixed their conformity to the onerous contract to their detriment just to get the loan was not remote. In dire need as they were, they signed a document despite knowing that it did not express their real intention. "Necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them." [29] For this reason, the Repuela brothers should be given the protection afforded by the Civil Code provisions on equitable mortgage.

As aptly explained in *Cruz v. Court of Appeals*,[30] the Court held:

Vendors covered by Art. 1602 usually find themselves in an unequal position when bargaining with the vendees, and will readily sign onerous contracts to get the money they need. Necessitous men are not really free men in the sense that to answer a pressing emergency they will submit to any terms that the crafty may impose on them. This is precisely the evil that Art. 1602 seeks to guard against. The evident intent of the provision is to give the supposed vendor maximum safeguards for the protection of his legal rights under the true agreement of the parties.[31]

Besides, where a party is unable to read or when the contract is in a language not understood by a party and mistake or fraud is alleged, the obligation to show that the terms of the contract had been fully explained to the said party who is unable to read or understand the language of the contract devolves on the party seeking to enforce it. Indeed, that burden to show that the other party fully understood the contents of the document rests upon the party who seeks to enforce the contract. If he fails to discharge this burden, the presumption of mistake, if not, fraud, stands un rebutted and controlling.[32] Respondent failed to overcome this burden.

In the case at bench, Galileo's testimony that he had witnessed the Repuela brothers affix their conformity after Atty. Bacalso read and explained to them the contents of the document in the Cebuano dialect, fails to convince this Court. As keenly observed by the RTC, Galileo was just six (6) years old when he witnessed the transaction in the office of Atty. Bacalso. To the Court's mind, Galileo could not have possibly known the nature of the purported contract, much less, perceived with certainty if the Repuela brothers were indeed apprised of the true nature of the said contract before they were made to sign and thumbmark it. For this reason, the presumption of mistake, if not fraud, shall remain.

Furthermore, it must be pointed out that the law accords the equitable- mortgage presumption in situations when doubt exists as to the true intent of the parties to the contract,[33] as in this case. Courts are generally inclined to construe one purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy.[34]

There was no prescription
or laches

Contrary to the findings of the CA that petitioners' cause of action was already barred by laches because of the 39 years that had already lapsed before they asserted their rights over the property, the Court holds otherwise. In *Inamarga v. Alano*,[35] the Court considered the deed of sale as equitable mortgage and wrote:

xxx Where there is no consent given by one party in a purported contract, such contract was not perfected; therefore, there is no contract to speak of. The deed of sale relied upon by petitioner is deemed a void contract. This being so, the action based on said deed of sale shall not prescribe in accordance with Article 1410 of the Civil Code.[36] [Emphasis supplied]

Legal Interest

In the case of *Muñoz v. Ramirez*,^[37] the Court stated that where it was established that the reciprocal obligations of the parties were under an equitable mortgage, reconveyance of the property should be ordered to the rightful owner therein upon the payment of the loan within 90 days from the finality of that decision.^[38]

In the case at bench, the RTC ordered the Repuela brothers to pay their loan amounting to P2,000.00 with interest at the legal rate computed from the date of the filing of the complaint in order for them to repair the property.

In determining the legal rate applicable in this case, Circular No. 799, series of 2013, issued by the Office of the Governor of the Bangko Sentral ng Pilipinas on June 21, 2013, which was the basis of the Court in *Nacar v. Gallery Frames*,^[39] provides that effective July 1, 2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum. Applying the foregoing, the rate of interest of 12% per annum on the obligation of the Repuela brothers shall apply from the date of the filing of the complaint on January 17, 2003 until June 30, 2013 only. From July 1, 2013 until fully paid, the legal rate of 6% per annum shall be applied to their unpaid obligation.

WHEREFORE, the petition is GRANTED. The assailed May 29, 2014 Decision and the June 10, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 03976 are SET ASIDE. The February 23, 2011 Decision of the Regional Trial Court, Cebu City, Seventh Judicial Region, Branch 7 in Civil Case No. CEB-28524 is REINSTATED with MODIFICATION in that the 12% interest per annum shall only apply from January 17, 2003 until June 30, 2013 only, after which date and until fully paid, the mortgage indebtedness of Cipriano Repuela and Marcelino Repuela shall earn interest at 6% per annum.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Leonen, JJ., concur.

[1] Rollo, pp. 50-64. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Edgardo L. Delos Santos and Jhosep Y. Lopez, concurring.

[2] Id. at 81-83.

[3] Id. at 42-49. Penned by Judge Simeon P. Dumdum, Jr.

[4] Id. at 52.

[5] Id. at 52-53.

[6] Id. at 43.

[7] Id.

[8] Id. at 43-44.

[9] Id. at 44-46.

[10] Id. at 45.

[11] Id. at 48.

[12] Id. at 48-49.

[13] Id. at 49.

- [14] Id. at 60-63.
- [15] Id. at 63.
- [16] Id. at 29- 30.
- [17] Id. at 31.
- [18] Id. at 34.
- [19] Id. at 37.
- [20] Id. at 92-114.
- [21] Id. at 99.
- [22] Deheza-Inamarga v. Alano, et al., 595 Phil. 294, 302 (2008).
- [23] Lustan v. CA, 334 Phil. 609, 615 (1997).
- [24] Solitarios v. Jaque, G.R. No. 199852, November 12, 2014, 740 SCRA 226, 235-236.
- [25] Go v. Bacaron, 509 Phil. 323, 335 (2005).
- [26] Solitarios v. Jaque, supra note 24, at 250.
- [27] 508 Phil. 633 (2005).
- [28] Id. at 635.
- [29] Labasan v. Lacuesta, 175 Phil. 216, 221-222 (1978).
- [30] Cruz v. Court of Appeals, 459 Phil. 264 (2003).
- [31] Id. at 276.
- [32] Mayor v. Belen, 474 Phil. 630, 639 (2004).
- [33] Heirs of Soliva v. Severino, et al., G.R. No. 159611, April 22, 2015.
- [34] Agas v. Sabico, 496 Phil. 729, 741 (2005).
- [35] 595 Phil. 294 (2008).
- [36] Id. at 303.
- [37] 643 Phil. 267 (2010).
- [38] Id. at 282.
- [39] 716 Phil. 267, 282 (2013).

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