

FELIZA ZUBIRI, PETITIONER, VS. LUCIO QUIJANO, RESPONDENT.*G.R. No. 48696. November 28, 1942*

Ponente: PARAS, J.

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This is an appeal from a decision of the Court of Appeals holding that the contract dated May 15, 1934, purporting to be a two-year pacto de retro sale of three parcels of land from the petitioner, Feliza Zubiri, to the respondent, Lucio Quijano, is an equitable mortgage, sentencing the former to pay to the latter, within three months, the alleged purchase price of P700, with legal interest from the date of the filing of the complaint (November 15, 1937), and ordering that, in default of payment, the land be sold at public auction and the proceeds of the sale applied to the satisfaction of the judgment, without special pronouncement as to costs.

Under the first assignment, the petitioner contends that the Court of Appeals erred in ordering the sale of the land in case of non-payment of the judgment, on the ground that the contract relied upon by the respondent, not having been registered in accordance with the Land Registration Act, cannot operate as a mortgage so as to justify its foreclosure. There is no merit in the contention. The contract, evidencing a pacto de retro sale which is unquestionably more disadvantageous to the petitioner, has been held to be an equitable mortgage and, from its very nature, the lien thereby created ought not to be defeated by requiring compliance with the formalities necessary to the validity of a voluntary real estate mortgage, as long as the land remains in the hands of the petitioner and the rights of innocent third parties are not affected. In the case of *Correa vs. Mateo and Icasiano* (55 Phil., 79), wherein an unrecorded pacto de retro sale was construed as an equitable mortgage, it was held that the plaintiff had the right "within sixty days after final judgment, for a failure to pay the amount due and owing him, to foreclose his mortgage in a proper proceeding and sell all or any part of the ten parcels of land to satisfy his debt."

Under the second assignment, the petitioner alleges that the Court of Appeals erred in not finding that she had paid to the respondent usurious interest amounting (as found by the Court of First Instance of Mindoro) to P950. The pronouncements of the Court of Appeals, to wit, "pero rechazamos la pretension de la demandada, aceptada por el Tribunal a quo, de que el demandante percibio intereses usurarios" and "Con respecto a la alegacion sobre usura, la misma nos parece insostenible," being conclusions of fact, must be accepted for the purposes of the present appeal, since we cannot make contrary findings without re-examining the evidence, and we are not authorized to do this.

It results that the Court of Appeals did not commit any error. In the exercise, however, of our equity jurisdiction, and especially considering that the present complaint did not originally seek the recovery of a debt, that the petitioner obtained a favorable judgment in the Court of First Instance and that the vote in the Court of Appeals was three to two, we are inclined to hold that the petitioner should be sentenced to pay interest only from the date our decision becomes final. As thus modified, the appealed decision is affirmed, with costs against the petitioner.

Yulo, C. J., Moran, Ozaeta, and Bocobo, JJ., concur.

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