

**CARLO LEZAMA BUNDALIAN AND JOSE R. BUNDALIAN,
PETITIONERS, VS. THE HON. COURT OF APPEALS, JUANITO
LITTAWA AND EDNA CAMCAM, RESPONDENTS.**

G.R. No. 55739, June 22, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Court of Appeals, now Intermediate Appellate Court, affirming a judgment of the then Court of First Instance of Rizal dismissing the petition for declaratory relief and/or reformation of instrument filed by the petitioners against the respondents and ordering the petitioners to pay jointly and severally the amounts of P200,000.00 for respondent Edna Camcam and P50,000.00 for respondent Littawa, as moral damages; the amount of P50,000.00 for both respondents as exemplary damages; the amount of P30,000.00 for and as attorney's fees, and to pay the costs of the suit.

On July 1, 1975, the petitioners purchased from the Estate of the Deceased Agapita Sarao Vda. de Virata three (3) contiguous parcels of land located at San Juan, Rizal, containing an aggregate area of 3,328 square meters, more or less, for and in consideration of the amount of P499,200.00.

The following day, July 2, 1975, the petitioners, in a contract denominated as Deed of Sale with Right to Repurchase, sold to the private respondents the same three contiguous parcels of land for the same amount of P499,200.00 under specified terms and conditions. One of the terms and conditions was that the repurchase price would escalate month after month, depending on when repurchase would be effected. The price would be P532,480.66 computed at P160.00 per square meter after the first month; P565,760.00 computed at P170.00 per square meter after the second month; P599,040.00 computed at P180.00 per square meter after the third month; and P632,320.00 computed at P190.00 per square meter after the fourth month, from and after the date of the instrument. It was also stipulated in the same contract that the vendor shall have the right to possess, use, and build on, the property during the period pending redemption.

On August 26, 1976, the petitioners filed a petition for declaratory relief and/or reformation of instrument before the Court of First Instance of Rizal at Pasig, Metro Manila to declare the Deed of Sale with Right to Repurchase an equitable mortgage and the entire portion of the same deed referring to the accelerating repurchase price null and avoid for being usurious, and to reduce the loan obligation to P474,200.00, contending that the amount actually loaned was only P474,200.00 and the petitioners put up P25,000.00 of the wife's money when the purchase from the estate of Mrs. Virata was consummated.

On August 27, 1976, the private respondents, in turn, filed a petition for the consolidation of ownership on the ground that "more than a year has elapsed since the execution of the Deed of Sale with Right to Repurchase by the vendor on July 2, 1975." The private respondents contended that "notwithstanding which the vendor has failed to avail of its rights under the provisions of Article 1607 in relation to Article 1616 of the New Civil Code, the vendor has lost all his rights to avail himself of the right to consolidate ownership of the property subject of the

Deed of Sale." To this petition for consolidation of ownership, the petitioners filed their opposition upon the following grounds: (a) there is a pending suit between the same parties involving the same cause and subject matter; (b) consolidation will be improper considering that the basic document upon which it is being sought is in fact and in law only an equitable mortgage; and (c) consolidation cannot be effected thru the instant petition.

Accordingly, the Court of First Instance of Rizal ordered the transfer of the petition for consolidation of ownership to Branch XXIV of the same Court where the petition for declaratory relief and/or reformation of instrument was pending in order that the two cases may be considered together.

A supplemental petition was subsequently filed by the petitioners alleging that the private respondents' petition for consolidation of ownership was made in order to frustrate and render nugatory whatever orders or judgment may be issued by the trial court in the petition for declaratory relief and/or reformation of instrument.

After the trial and presentation of the parties' respective memoranda, the trial court rendered the decision in favor of the private respondents.

The petitioners appealed to the Court of Appeals. The appellate court affirmed in toto the decision of the trial court. Two motions for reconsideration having been denied, the petitioners filed the present petition based on the following grounds:

A.

RESPONDENT COURT OF APPEALS ERRED GRAVELY, TO THE EXTENT OF GRAVE ABUSE OF DISCRETION, AND IN VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS OF LAW AT APPELLATE LEVEL, WHEN IT AFFIRMED THE APPEALED DECISION WITHOUT ANY DISCUSSION OF THE QUESTIONS RAISED IN THE APPEAL AND BY SIMPLY ADOPTING THE POSITION OF THE TRIAL COURT WHICH IS PRECISELY QUESTIONED IN THE APPEAL.

B.

RESPONDENT COURT OF APPEALS ERRED GRAVELY, TO THE EXTENT OF GRAVE ABUSE OF DISCRETION, IN ADOPTING TOTALLY AND UNCRITICALLY THE GROSSLY ERRONEOUS REASON AND POSITION OF THE TRIAL COURT.

C.

RESPONDENT COURT OF APPEALS ERRED GRAVELY, TO THE EXTENT OF GRAVE ABUSE OF DISCRETION, IN UNCEREMONIOUSLY, DENYING PETITIONERS' FIRST MOTION FOR RECONSIDERATION, MOTION FOR ORAL ARGUMENT, MOTION TO INVITE AMICUS CURIAE, AND SECOND MOTION FOR RECONSIDERATION.

E.

RESPONDENT COURT OF APPEALS ERRED GRAVELY, TO THE EXTENT OF GRAVE ABUSE OF DISCRETION, IN NOT REVERSING THE APPEALED JUDGMENT AND GRANTING THE PRAYERS OF PETITIONERS-APPELLANTS, FOREMOST OF WHICH IS TO DECLARE THE DEED OF SALE WITH RIGHT TO RE-PURCHASE TO BE AN EQUITABLE MORTGAGE.

The issue in this case is whether or not the deed of sale with right to repurchase should be declared as an equitable mortgage.

We find meritorious the petitioners' contention that under Article 1602 of the Civil Code the deed of sale with right to repurchase should be presumed to be an equitable mortgage due to the following reasons:

"(1) The two contracts involving the subject properties came one after another in the space of two (2) days. The Deed of Absolute Sale between petitioner Jose R. Bundalian as vendee and Romeo S. Geluz, in his capacity as Administrator of the Estate of the deceased Agapita Sarao Vda. de Virata, as vendor, was executed on July 1, 1975 (pp. 19-26, Annex "A"). The purported Deed of Sale with Right to Repurchase between petitioner, Jose R. Bundalian as vendor and respondents Juanito Littawa and Edna Camcam as vendees was executed on July 2, 1975 (pp. 26-32, Annex "A"). This already indicates, at a very early stage, that the two transactions must be intimately related.

"(2) Such intimate relation between the aforementioned Deed of Absolute Sale and Deed of Sale with Right to Repurchase is already clear in the statement in the latter instrument that the subject property had just been purchased by Jose R. Bundalian from the estate of the deceased Agapita Sarao Vda. de Virata, 'with funds loaned to him by the herein VENDEES' the latter being no other than respondents Littawa and Camcam (p. 28, Annex "A"). Patently, petitioner Jose R. Bundalian was funded by private respondents to enable him to purchase the property from the said estate.

"(3) Having just purchased the property from the estate by way of Deed of Absolute Sale on July 1, 1975, for which he had just paid P499,200.00 as purchase price, it would have been utterly senseless for petitioner Jose R. Bundalian to sell the same property to private respondents the very next day, July 2, 1975, with or without the right of repurchase. No other conclusion is possible except that the Deed of Sale with Right to Repurchase is precisely the security - the equitable mortgage - to petitioner Jose R. Bundalian to enable the latter to purchase the property from the aforementioned estate.

"(4) It would have been more senseless for petitioner Jose R. Bundalian to sell the property to private respondents at the same price of P499,200.00 he had paid the estate of the deceased Agapita Sarao Vda. de Virata, without profit and at a sure loss. By the terms of the Deed of Sale with Right to Repurchase he would have to repurchase the property at a continually increasing price, from P150.00 per square meter to P190.00 per square meter, that is, up to P133,120.00 over and above the original price of P499,200.00, in only four (4) months. Again, no other conclusion is possible but that the contract is an equitable mortgage, not a sale.

"(5) It is provided in the Deed of Sale with Right to Repurchase that 'It is agreed that the vendor (Jose R. Bundalian) shall have the right to possess, use, and build on, the property during the period of redemption' (p. 30, Annex "A"). It has been held that there is a 'loan with security' rather than a pacto de retro sale where by agreement the vendor was to remain in possession of the lands (*Escoto vs. Arcilla*, 89 Phil. 199, 204). Where there was an acknowledgment of the vendor's right to retain possession of the property, as in the case at bar, the contract was one of 'loan guaranteed by a mortgage' rather than a conditional sale (*Macoy vs. Trinidad*, 95 Phil. 192, 202). Indeed, there can be no question that petitioner Jose R. Bundalian remained legally in possession of the subject property. Again, the conclusion is ineluctable that the Deed of Sale with Right to Repurchase was executed as security for the loan extended by private respondents to petitioner Jose R. Bundalian, i.e., as equitable mortgage.

"(6) The increase per month in the alleged redemption price is very compatible with the idea that the transaction was really intended by the parties to be a mortgage. It bears emphasis, at this juncture, that the supposed repurchase price is in the same amount as the original 'price' of P499,200.00 should 'repurchase' be effected during the first month from and after the date of the instrument; P532,480.00 computed at P160.00 per square meter should 'repurchase' be effected after the first month; P565,760.00 computed at P170.00 per square meter should 'repurchase' be after the second month; P599,040.00 computed at P180.00 per square meter should 'repurchase' be after the third month; or P632,320.00 computed at P190.00 per square meter should 'repurchase' be effected even 'after the fourth month (pp. 29-30, Annex "A"). The monthly increases in the alleged 'redemption price' clearly represent nothing but interest. It is well-settled that provision for interest

payments is a clear indication that the supposed sale is actually an equitable mortgage (*Macoy vs. Trinidad*, 95 Phil. 192, 202; *Escoto vs. Arcilla*, 89 Phil. 199, 204). This would fall under the legal situation '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' (No. 6), Art. 1602, Civil Code). To make matters worse, the monthly increase in the supposed 'redemption price', meaning the interest of course, are clearly usurious, precisely one of the evils sought to be negated by the provisions of Articles 1602, 1603 and 1604 of the Civil Code, as noted previously herein.

"(7) While the Deed of Sale with Right to Repurchase supposedly provided for a 'redemption' period of 'four (4) months from and after the date of this instrument' (p. 29, Annex "A"), it later necessarily provided for a built-in extension of the period of 'redemption' by providing for payment of the amount of P632,320.00 computed at P190.00 per square meter should 'repurchase' be effected 'after' the fourth month (p. 30, Annex "A"). In other words, it was implicitly agreed that the period of 'repurchase' was not limited to 4 months from and after the date of execution of the instrument, in as much as said 'repurchase' could be effected even 'after' the fourth month. It is well-settled that extension of the period of 'redemption' is indicative of equitable mortgage (Nos. (3) and (6), Art. 1602, Civil Code; *Reyes vs. De Leon*, 20 SCRA 369, 370).

"(8) It may be argued, as private respondents have argued, that normally a loan does not exceed 60% of the price of the land given as security, so that private respondents could not have loaned P499,200.00 on the land the value of which was claimed to be also P499,200.00. However, such reasoning is clearly unsound. It loses sight of the fact that private respondents precisely funded or financed petitioner Jose R. Bundalian's acquisition of the property from the estate of the deceased Agapita Sarao Vda. de Virata. In other words, petitioner Jose R. Bundalian could not have acquired the land to serve as security for the repayment of the loan unless private respondents had extended the loan in the first place. Surely, private respondents stood to benefit enormously from such financing transaction in view of the patently usurious monthly interests transparently disguised as the accelerating or increasing monthly 'repurchase' price. At any rate, in the event that petitioner Jose R. Bundalian ultimately failed to pay the loan, the rapid increase in the price of the land, which was estimated to be worth at least P632,320.00 after 4 months (from the initial P499,200.00), practically guaranteed a very good return on the money investment of private respondents as money-lenders.

"(9) It cannot be questioned that petitioner Jose R. Bundalian paid taxes on the land, even after the supposed 4-month period of 'redemption'. Payment of taxes after expiration of the supposed 'redemption' period has been considered as indicative of equitable mortgage (*Escoto vs. Arcilla*, supra).

"(10) It is an admitted fact that private respondents took some time before filing their petition for consolidation of ownership. Private respondents admitted in said petition that 'more than a year has elapsed since the execution of the Deed of Sale with Right to Repurchase' (p. 34, par. 3, Annex "A"). Reckoning 4 months from July 2, 1975, it would appear that the 'repurchase' period expired supposedly on November 2, 1975. As private respondents filed their petition for consolidation on August 27, 1976, it is clear that they delayed filing said petition by more than 9 months. A similar delay in the filing of the supposed 'vendee's' petition for consolidation was considered as indicative of equitable mortgage (*Reyes vs. de Leon*, 20 SCRA 369, 378).

"(11) If the Deed of Sale with Right to Repurchase would not be considered as an equitable mortgage, it would result that there was actually no security for the loan of P499,200.00 extended by private respondents to petitioners Jose R. Bundalian, which would make no sense at all, considering the enormity of the loan. There was, to be sure, a security for said loan, none other than the equitable mortgage tainted with usury and disguised as the Deed of Sale with Right to Repurchase."

The private respondents argued that the petitioners' contention is true only in cases where the contract or instrument is not reflective of the true intentions of the contracting parties as would warrant reformation of the same. They stated that if the intention of the parties is to execute a deed of sale with pacto de retro, the contract should be held as such. The petitioners were allegedly fully aware that the deed of sale with pacto de retro is what

it purports to be and nothing else. Furthermore, the petitioners waited for the period of redemption to expire before availing of the relief granted by the Civil Code of reformation of contracts.

We find the stand of the private respondents without merit. The intent of the parties to circumvent the pro-vision discouraging pacto de retro transactions is very apparent from the records. Article 1602 of the Civil Code states:

"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 pos-session 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 cases 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 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."

Significantly, a portion of the document in question reads:

"(The vendor) having just purchased the same from the Intestate estate of the deceased Agapita Sarao Vda. de Virata (Special Proceedings No. N-710) of the Court of First Instance of Cavite), with funds loaned to him by the herein VENDEES." (Italics supplied).

This statement appearing in the supposed pacto de retro sale confirms the real intention of the parties to secure the payment of the loan acquired by the petitioners from the private respondents. The sale with the right to repurchase of the three parcels of land was for P499,200.00, which was exactly the same amount paid to the estate of the deceased Agapita Sarao Vda. de Virata. After having purchased the three lots for P499,200.00, the vendors should at least have earned a little profit or interest if they really intended to resell the lots the following day. Instead, they suffered a loss of P25,000.00 because the amount borrowed, and we find grounds to believe their statement of having advanced P25,000.00 of their own funds as earnest money, was actually only P474,000.00. The petitioners also bound themselves to pay exceedingly stiff prices for the privilege of repurchase. The intent of the parties is further shown by the fact that the Bundalians P500,000.00 collectibles due from the government for completed construction contracts could not be collected on time to pay for the lots advertised for sale in Bulletin Today. The petitioners had to run to the private respondents who had money to lend. The Bundalians received the accounts due from the government only in 1977 after the proceedings in the trial court were well underway.

The stipulation in the contract sharply escalating the repurchase price every month enhances the presumption that the transaction is an equitable mortgage. Its purpose is to secure the return of the money invested with substantial profit or interest, a common characteristic of loans.

The private respondents try to capitalize on an admission by Mrs. Bundalian that she "accepted" the transaction knowing it to be a contract of sale with right of re-purchase. The reliance is grounded on shaky foundations. The Bundalians were in the construction business and knew quite well what they were signing. But vendors covered by Article 1602 of the Civil Code are usually in no position to bargain with the vendees and will sign onerous contracts to get the money they need. It is precisely this evil which the Civil Code guards against. It is not the

knowledge of the vendors that they are executing a contract of sale pacto de retro which is the issue but whether or not the real contract was one of sale or a loan disguised as a pacto de retro sale.

The contract also provides that "it is agreed that the vendor shall have the right to possess, use, and build on, the property during the period of redemption". When the vendee acknowledged the right of the vendor to retain possession of the property the contract is one of loan guaranteed by mortgage, not a conditional sale or an option to repurchase. (*Macoy vs. Trinidad, et al.*, 95 Phil. 192).

The respondents' contention that the right to possess, use, or build on the lots embodied in the contract was a mere "right" and not actual possession appears to be sophistry. The records show that the Bundalians construction equipment such as tractors, payloaders, and bulldozers were on the lots. A shop was built on the premises. Mr. Bundalian testified that from the time he purchased the property from the estate of Mrs. Virata up to the "minute" he testified, he never lost possession. The Bundalians paid the real estate taxes on the lots. As against the express provision of the contract and the actual possession by the petitioners, the private respondents come up with a far fetched argument that since the titles to the lots were in their hands, they were the ones in legal possession. Parenthetically, the titles in their hands were still in the name of the estate of Agapita Sarao Vda. de Virata, the original vendor-owner.

IN VIEW OF THE FOREGOING, the decisions of the respondent Court of Appeals and the trial court are hereby REVERSED and SET ASIDE. The deed of sale with right to repurchase is declared as an equitable mortgage. The petitioners are ordered to pay their debt to the private respondents with legal rate of interest from the time they acquired the loan until it is fully paid. SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

De la Fuente, J., no part.

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