

**PATERNO D. ESCUDERO AND ARACELI D. ESCUDERO, PETITIONERS,
VS. JUDGE CEFERINO E. DULAY, COURT OF FIRST INSTANCE OF
CEBU (BRANCH XVI), COURT OF APPEALS, RUDY AMISTAD AND
PACITA AM...**

G.R. No. 60578. February 23, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

A special civil action for certiorari to annul and set aside the decision[*] of the Court of Appeals, dated 26 February 1982, in CA G.R. No. 67058-R entitled "Spouses Rudy Amistad and Pacita Amistad, plaintiffs-appellees vs. Araceli Escudero for herself and as Attorney-in-Fact of Paterno D. Escudero, defendants-appellants" affirming in toto the decision of the Court of First Instance of Lapu-Lapu City, Cebu, Branch XVI, rendered 10 April 1980 in Civil Case No. 438-L entitled "Spouses Rudy Amistad and Pacita Amistad, Petitioners, versus Araceli Escudero for herself and as attorney-in-fact of Paterno D. Escudero, Respondents".

The facts of the case are as follows:

On 18 July 1979, petitioner Araceli D. Escudero, wife of petitioner Paterno D. Escudero, executed a "Deed of Absolute Sale under Pacto de Retro" in favor of private respondents, the Amistad spouses, over a parcel of residential land in Lapu-Lapu City covered by Transfer Certificate of Title No. 9223 of the Register of Deeds of that city. The consideration stated in the document was P42,350.00. Redemption was to be made by the vendors within three (3) months after the execution of the Deed of Sale, at the same price of P42,350.00.[1]

The period of redemption expired without an offer of repurchase being made by petitioner wife or her husband, petitioner Paterno D. Escudero, who had earlier given his wife a special power of attorney "to sell, transfer, mortgage and convey" the land subject of the pacto de retro sale, which was the spouses' conjugal property.

On 28 October 1979, or ten (10) days after the expiration of the redemption period, private respondent spouses filed a petition for consolidation of title over the parcel of land in question. This was opposed by petitioner wife in an Answer, duly verified by her, where she alleged as an affirmative and special defense that the transaction between her and private respondents was actually one of loan of P35,000.00, as principal, with 7% monthly interest, thus totalling P42,350.00, with the land mortgaged as collateral or security. That the transaction was an equitable mortgage can be gleaned, according to her, from the gross inadequacy of the purchase price and the fact that she, the alleged vendor, remained in possession of the land and continued to enjoy the fruits thereof.[2]

On 16 November 1979, or nearly a month after the expiration of the redemption period, and upon advice of petitioners' then counsel, Atty. Emmanuel Seno, petitioner wife deposited P42,350.00 in the form of a bank manager's check, as redemption money, with the Clerk of Court of respondent trial court. Atty. Seno then manifested at the pre-trial conference held on 10 March 1980 that he was moving for a judgment on the pleadings after agreeing to the characterization of the transaction between the parties as a sale with pacto de retro, because

under Article 1606 of the New Civil Code, the vendors (petitioners) may still exercise their right of repurchase within thirty (30) days from the time final judgment is rendered in a civil action, if the contract is a true sale with right to repurchase.[3]

The transcript of the pre-trial proceedings before the respondent trial court discloses Atty. Seno's exposition and conclusions as follows:

"ATTY. EMMANUEL I. SENO:

"For the defendants Your Honor please, this is a case of consolidation of ownership under pacto de retro sale. The document under consideration which is the pacto de retro sale is dated July 18, 1979 and is for a period of 3 months, to expire on October 18, 1979. On October 25, 1979 (should be October 26), the plaintiffs-spouses filed this case which is only a period of one week from the time the document becomes due on October 18, 1979. It is the theory of the plaintiffs Your Honor please, that the transaction between them and the defendants is one of pacto de retro sale, however, in our answer we contend that it is one of equitable mortgage. But after filing our answer Your Honor please, we deposited with the Court the amount of P42,350.00. It is now in the possession of the Clerk of Court of this Honorable Court. Even if we have to follow the theory of the plaintiffs Your Honor please that the transaction between them and the defendants is one of pacto de retro sale, still they could not consolidate ownership because we still have 30 days even after final judgment of this present case now in Court assuming Your Honor please, that the transaction between the plaintiffs and the defendants is one of pacto de retro sale. Under Article 1606, par. 3 of the New Civil Code, the vendor in a pacto de retro sale still has the right to repurchase the property within 30 days even after the date of final judgment in a civil case on the basis that the contract was a true sale with right to repurchase. So if we have to analyze it Your Honor please, in favor of the plaintiffs to the effect that the transaction was one of pacto de retro sale, still we have the right to repurchase the property within 30 days the judgment becomes final and we have already deposited the money with the Court Your Honor please, as early as first week of October, 1979, so I think it is a waste of time hearing this case Your Honor please.

"COURT:

"Because of the deposit?

"ATTY. SENO:

"Because of the deposit Your Honor please, and also the law is very clear that even after final judgment, under Article 1606 of the New Civil Code, the defendants have still the right to repurchase the property.

"x x x

"ATTY. SENO:

"I am intending to file a motion for judgment on the pleadings Your Honor. I have to include in my motion the fact that as of the first week of October 1979, we have deposited the amount of P42,350.00 to cover the amount in the pacto de retro sale and of course, we have also to state that we will just abandon our defense of equitable mortgage. I explained to the counsel that since October, 1979 we have deposited the amount and for almost 4 months, we can just imagine that the money could have earned interest already.

"x x x

"COURT:

"So it is judgment on the pleadings and we can forego with the pre-trial conference.

"ATTY. SENO:

"Yes, Your Honor".[4] (Emphasis supplied)

Thus, on 19 March 1980, petitioner wife (as defendant), through counsel, moved for judgment on the pleadings, alleging among others that -

"3.- The act of the defendant in depositing with the Office of the Clerk of Court of this Honorable Court the amount of P42,350.00 in consignment for her obligation to the plaintiff in accordance with the Pacto de Retro Sale in question is tantamount to abandoning her defense as alleged in her answer to the complaint and that she is deemed to have admitted material allegations in the complaint.

"4.- Moreover, under Article 1606 of the New Civil Code, the Vendor-A-Retro in a Pacto de Retro Sale has still thirty (30) days from the time judgment in the civil case for consolidation of ownership of the land subject of the Pacto de Retro Sale has become final and executory within which to redeem the said property from the Vendee-A-Retro.

"5.- In view of the foregoing circumstances, it is the desire of the defendant that judgment be rendered in the above-entitled case in accordance with the pleadings filed by the parties in the above-entitled case."

The respondent trial court rendered judgment against petitioners. The court held that the interpretation by petitioners' counsel of par. 3 of Art. 1606 of the Civil Code was misplaced, as decisions have uniformly held that the pro-*vision* applies only to situations where there is a dispute as to the nature of a transaction either as a true sale with right of repurchase or an equitable mortgage, and not where the parties admit or agree that the transaction is a true sale, as petitioners' counsel did admit or stipulate in this case. Said the trial court -

"The decisive issue to be resolved is whether the manager's check payable to respondent Araceli D. Escudero which respondents' counsel deposited by way of consignment to the Clerk of Court on November 26, 1979 falls within the ambit of Article 1606 of the new Civil Code.

"There are authorities and rulings impressive in array and character which militate against the posture of respondents. Article 1606 of the New Civil Code provides:

"The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

"Should there be an agreement, the period cannot exceed ten years.

"However, the vendor may still exercise the right to repurchase with-in 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."

"Commenting on paragraph three of the above provision, Dean Capistrano said:

"Par. three of the article is a new provision, formulated by the Code Commission. It is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage, but the court decides otherwise.

"The Supreme Court held that Article 1606 contemplates a case involving a controversy as to the true nature of the contract, and the court is called upon to decide the debatable question as to whether it is sale with pacto de retro or an equitable mortgage. Where, as here, the transaction is admittedly and clearly a deed of sale and the stipulated period of redemption or repurchase had expired, said legal provision does not apply.

"1. In fine, the provision under consideration clearly envisages a situation where there is a controversy respecting the juridical nature or character of the contract. There is none in this case. In the words of Justice Fernando (now Chief Justice) in *Tapas vs. Court of Appeals*, thus:

"The new provision contemplates a case involving a controversy as to the true nature of the contract, and the court is called upon to decide whether it is sale with pacto de retro or an equitable mortgage. In the case at bar, the transaction is admittedly a deed of sale and the stipulated period of redemption had expired. It bears repeating that here there can be no controversy as to the contract being one of absolute sale, pure and simple. There could not even then be a period of redemption."

"2. The nature of the document was no longer squarely placed in issue with the express abandonment of respondents' special and affirmative defense that it is an equitable mortgage, rather than an absolute deed of sale with right to repurchase, at the same time, admitting all the material allegations of the petition for consolidation of ownership. The third paragraph of Article 1606 of the new Civil Code may no longer be invoked by respondents.

"3. Having reached a conclusion that respondents are not legally entitled to repurchase this property pursuant to the aforementioned provision of law, it necessarily follows that the alleged consignment of a manager's check, long after the period to repurchase had expired, has no force and effect."

Petitioners through the same counsel appealed to the Court of Appeals and alleged that the trial court erred in -

[1] "xxx holding that respondents-appellants [petitioners herein] admitted the material allegations of the petition in the above-entitled case in filing a motion for judgment on the pleadings and in abandoning their special and affirmative defenses.

[2] "xxx holding that respondents-appellants [petitioners herein] cannot invoke the provisions of the third paragraph of Article 1606 of the New Civil Code and that the money deposited by way of consignment to the Clerk of Court on November 16, 1979, does not fall under the ambit of Article 1606 of the New Civil Code.

[3] "xxx in not pronouncing categorically that the document in question, Annex "A" to the petition, is a Deed of Absolute Sale with the right to repurchase."

On 26 February 1982, the Court of Appeals affirmed the decision of the trial court. Petitioners' counsel received a

copy of the Court of Appeals decision on 16 March 1982. Seventeen days later, or on 3 April 1982, he filed a motion for extension of time to file a motion for reconsideration. This was of course denied for being filed out of time.

Hence, this special civil action filed on 28 May 1982 by petitioners, this time, represented by new counsel. Initially, the Court dismissed the petition in a resolution dated 21 July 1982. A motion to reconsider said dismissal was denied, in a resolution dated 27 September 1982 which declared said denial as final. It is a tribute to the persistence of petitioners' counsel and his fidelity to client's cause that he asked for leave to file a second motion for reconsideration, which was granted by the Court in a resolution dated 3 November 1982.

Petitioners' second motion for reconsideration was filed and in the resolution dated 17 January 1983, the Court, after requiring private respondents to comment on said second motion for reconsideration, granted the same and gave due course to the petition, requiring the parties to submit their respective memorandum simultaneously.

Petitioners contend, through their new counsel, that the judgments rendered against them by the respondent courts are null and void, because they were therein deprived of their day in court and divested of their property without due process of law, through the gross ignorance, mistake and negligence of their previous counsel. They acknowledge that, while as a rule, clients are bound by the mistake of their counsel, the rule should not be applied automatically to their case, as their trial counsel's blunder in procedure and gross ignorance of existing jurisprudence changed their cause of action and violated their substantive rights.

We are impressed with petitioners' contentions.

Ordinarily, a special civil action under Rule 65 of the Rules of Court will not be a substitute or cure for failure to file a timely petition for review on certiorari (appeal) under Rule 45 of the Rules. Where, however, the application of this rule will result in a manifest failure or miscarriage of justice, the rule may be relaxed.

Here, there is good and valid evidence to support petitioners' allegation and defense that the transaction they entered into with private respondents was indeed one of loan with equitable mortgage, for P35,000.00 as principal, with 7% monthly interest amounting to P7,350.00 for three (3) months which, when added to the principal of P35,000.00, total P42,350.00, exactly the "purchase price" stated in the Deed of Sale. Computation of the principal, interests and agent's fees is shown in a note (Annex K-1, Second Motion for Reconsideration) written and signed by a certain Necitas Ybanez, agent of both parties in the transaction, who received P1,250.00 for documentation and other expenses, which were deducted from the principal of P35,000.00, so that, what petitioner wife actually received from private respondents was only P33,750.00 as shown by a Philippine Veterans Bank Check no. CB80480 dated 18 July 1979 (Annex K-2, Second Motion for Reconsideration) drawn by respondent Pacita Amistad payable to petitioner wife.[5]

The price for the transaction, as a sale, is also grossly inadequate. Petitioners' Declaration of Real Property placed the value of the residential lot in question, a prime property near the Mactan International Airport, at P131,952.00. Private respondents claim that the land's value is only P86,400.00 but, even so, this value is still greatly in excess of the alleged purchase price of P42,350.00.

Petitioners' allegation and defense that what they and private respondents entered into was a loan with equitable mortgage is thus convincing.

While this Court is cognizant of the rule that, generally, a client will suffer the consequences of the negligence, mistake or lack of competence of his counsel, in the interest of justice and equity, exceptions may be made to such rule, in accordance with the facts and circumstances of each case. Adherence to the general rule would, in the instant case, result in the outright deprivation of their property through a technicality. The Court cannot close its,

eyes to the petitioner wife's affirmative and special defense, under oath in her Answer before the respondent trial court that her transaction with private respondents was not a pacto de retro sale but an equitable mortgage. The Court cannot also but take note of petitioners' evidence to support such verified defense, notably the incriminating note signed by the agent of both parties in which the real nature of the questioned transaction is revealed.

It has been recently decreed in *Liang Bay Logging Co., Inc. vs. The Hon. Court of Appeals*[6] that where there is clear entitlement of right, immediate relief may be granted by this Court to prevent prolonged litigation. In the words of the ponente, Mr. Chief Justice Teehankee: "The Court reaffirms the fundamental principle laid down by it that where the determinative facts and evidence have been submitted to it by the parties so that it is in a position to finally resolve the dispute, it will in pursuance of the ends of justice and the expeditious administration of justice so resolve the case on the merits, instead of remanding the case to the trial court and having the parties start all over again in needless and protracted proceedings".[7] Considering all the circumstances, we find this principle applicable to the instant case.

WHEREFORE, petition is GRANTED. The decisions of the Court of First Instance of Lapu-Lapu City, now Regional Trial Court of Lapu-Lapu City (Branch XVI) in Civil Case No. 438-L and of the Court of Appeals in CA-G.R. No. 67058-R are hereby REVERSED and SET ASIDE. The Register of Deeds of Lapu-Lapu City is ordered to cancel private respondents' title to the property, Transfer Certificate of Title No. 12401 and, in lieu thereof, issue a new Certificate of Title in petitioners' names, after which, the amount of P42,350.00 deposited by petitioners with the Clerk of Court of said respondent trial court on 16 November 1979 is to be released to private respondents. No costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[*] Penned by Justice Serafin R. Cuevas, with the concurrence of Justices Ramon G. Gaviola, Jr. and Juan A. Sison.

[1] Rollo at 4

[2] Id. at 45

[3] Id. at 7-8

[4] Trial Court Decision, Rollo at 26-28

[5] Id. at 104

[6] G.R. No. L-37783, 28 January 1988.

[7] Id., pp. 1-2 of Decision. The Court also added: "Remand of case to the lower court for further reception of evidence is not necessary where the court is in a position to resolve the dispute based on the records before it. On many occasions, the court, in the public interest and the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice would not be subserved by the remand of the case or when public interest demands an early disposition of the case or where the trial court had already received all the evidence of the parties". Id at 13.

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