

AURORA P. CAPULONG, BENJAMIN P. CAPULONG, CESAR P. CAPULONG, DOLORES P. CAPULONG, ESTER P. CAPULONG, FERNANDO P. CAPULONG, FELICITAS P. CAPULONG, IRMA P. CAPULONG, JAIME P. CAPU...

G.R. No. 61337. June 29, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the respondent Court of Appeals, now Intermediate Appellate Court, affirming a judgment of the Court of First Instance of Bulacan dismissing the complaint for annulment of usurious contracts, declaration of the deed of sale as equitable mortgage, reconveyance, and damages filed by Jovita Ponce Vda. de Capulong and ordering her to pay respondents the sum of P2,000.00 as attorney's fees and to pay the costs of the suit.

The background facts which led to the filing of this petition are summarized by the respondent Court of Appeals as follows:

"Between November 19, 1964 and May 28, 1965, plaintiff-appellant Jovita Ponce Vda. de Capulong obtained a series of loans in varied amounts from defendant-appellee Dr. Delfin Tolentino (Exhibits A to J), the aggregate of which amounted to P16,250.00 (Exh. J). The loans were secured by a continuing mortgage on plaintiff's 950.3 square meter titled property in barrio Concepcion, municipality of Baliuag, Bulacan province.

"Capulong failed to liquidate the mortgage upon maturity. Dr. Tolentino accepted her proposal to sell to him the mortgaged property. On February 18, 1967, the notarial document of absolute sale (Exh. K) now assailed as an equitable mortgage, was executed by Capulong whereby title to the property in question was transferred to Dr. Tolentino for P21,300.00, which amount was P1,000.00 more than Capulong's mortgage indebtedness. In another document (Exh. L) Capulong was given an option to purchase the property on or before November 20, 1967, for the same price of P21,300.00, Capulong failed to exercise the option in due time. Her efforts to secure an extension of time proved futile. On January 28, 1968, Dr. Tolentino sold (Exh. O) the land in question to defendants spouses Ricardo G. Tolentino and Pilar de Joya in whose names it is now titled (Exh. 14)."

On February 1, 1968, Jovita Ponce Vda. de Capulong, predecessor-in-interest of the petitioners, filed the complaint for annulment of usurious contracts, declaration of the deed of sale as an equitable mortgage, reconveyance, and damages with the Court of First Instance of Bulacan against respondent Delfin G. Tolentino. The case was docketed as Civil Case No. 3617-M.

On February 6, 1968, Mrs. Capulong filed an amended complaint alleging inter alia that the subject property was sold by Delfin Tolentino to the spouses Ricardo G. Tolentino and Pilar de Joya under a fictitious deed of sale. She also impleaded said spouses as additional defendants.

On September 9, 1968, the private respondents filed their answer alleging inter alia that the transactions adverted

to are not usurious and that the deed of absolute sale between them and Jovita Capulong is a true and valid sale representing the real intention of the parties.

On March 20, 1975, the trial court dismissed the complaint on the ground that Jovita Capulong was not able to present concrete evidence to prove her claim of usury and that the testimonies of the defendant Delfin Tolentino and his witness Fermin Samson were more credible and weighty than those of the plaintiff and her witness. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the complaint is hereby dismissed for total lack of merit, and the plaintiff is hereby ordered to pay the defendant the sum of P2,000.00 by way of attorney's fees, and to pay the cost of this suit."

Jovita Ponce Vda. de Capulong appealed to the then Court of Appeals. On May 9, 1978 while the appeal was pending, the appellant died, and on motion of her counsel, she was properly substituted by her children and heirs, the petitioners herein.

On January 27, 1981, the respondent court affirmed in toto the decision of the trial court.

On March 10, 1981, the petitioners filed a motion for reconsideration of said decision but this was denied in a resolution dated July 16, 1982.

For the grant of this petition, petitioners assign the following errors:

A. THE FORMULA USED BY THE COURT OF APPEALS IN COMPUTING THE 25% INTEREST ON THE PRINCIPAL OF THE VARIOUS LOANS IN QUESTION IS NOT SUPPORTED BY THE EVIDENCE NOR ADMITTED BY THE PARTIES.

B. IN GIVING WEIGHT TO THE FINDING OF THE TRIAL COURT ON THE CREDIBILITY OF THE WITNESSES FOR PRIVATE RESPONDENTS, THE COURT OF APPEALS MISAPPLIED THE RULE ON THE WEIGHT AND SUFFICIENCY OF EVIDENCE.

C. IN CONCLUDING THAT THE 'OPTION TO REPURCHASE' IN THIS CASE IS NOT A SOUND BASIS TO FIND THE DEED OF SALE IN QUESTION AS AN EQUITABLE MORTGAGE, THE COURT OF APPEALS ERRONEOUSLY APPLIED THE RULING IN THE CASE OF VILLARICA V. COURT OF APPEALS.

The main point for consideration in this petition is whether or not the "Pagbibilihang Tuluyan Ng Bakuran" should be treated as an equitable mortgage and not the absolute sale it purports to be.

Petitioners submit that the questioned deed of sale is not what it appears to be but that it is an equitable mortgage because the facts and evidence show it was merely resorted to by the parties in circumvention of the usury law. Private respondents on the other hand allege that Exhibits 11 and 12 do not embody a sale with repurchase agreement, or "sale con pacto de retro." They state that Exhibit 11 is a deed of absolute sale while Exhibit 12, in essence, simply grants the appellant an "option to buy."

We find the stand of the private respondents to be without merit, and accordingly reverse the decision elevated to us for review. Articles 1602 and 1604 of the Civil Code state:

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 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. (*Italics supplied*)

xxx xxx xxx

ART. 1604. The provisions of article 1602 shall also apply to a contract purporting to be an absolute sale.

Where any of the above circumstances defined in Article 1602 is present, a contract of sale with right to repurchase is presumed to be an equitable mortgage. As stated by the Code Commission which drafted the new Civil Code, in practically all of the so-called contracts of sale with right of repurchase, the real intention of the parties is that the pretended purchase price is money loaned and in order to secure the payment of the loan, a contract purporting to be a sale with pacto de retro is drawn up. (Report of the Code Commission, p. 63)

The respondent court allowed itself to be misled by our ruling in *Villarica v. Court of Appeals*, (26 SCRA 189), that:

"The right of repurchase is not a right granted the vendor by the vendee in a subsequent instrument, but is a right reserved by the vendor in the same instrument of sale as one of the stipulations of the contract. Once the instrument of absolute sale is executed, the vendor can no longer reserve the right to repurchase, and any right thereafter granted the vendor by the vendee in a separate instrument cannot be a right of repurchase but some other right like the option to buy in the instant case. x x x"

In *Villarica*, the deed of absolute sale was executed on May 19, 1951. The consideration was P35,000.00. It was registered on May 25, 1951. On that same day, May 25, 1951, the vendees therein executed another public instrument where they granted the vendors an option to buy the same property within a period of one year for the price of P37,750.00. The ruling was based on a particular set of facts.

There is one important factor that differentiates the *Villarica* case from the instant petition. The document granting the vendors therein an option to buy back the property was executed six (6) days after the execution of the deed of sale whereas in the instant case the option to buy was embodied in a document executed at the same time that the questioned deed of sale was executed. The option to buy in the *Villarica* case was interpreted to be only an afterthought. On the other hand, the intent of the parties to circumvent the provision discouraging pacto de retro sales is very apparent in the instant case. The two contracts, the deed of sale and the document embodying the option to repurchase were prepared, signed, and notarized on the same day. The respondent court should have seen through a transparent effort to make it appear that the two transactions were not intimately related but distinct and separate as in the *Villarica* case. This should have put the court on guard considering the other circumstances of the case from which no other conclusion could be derived except that the deed of absolute sale and the document giving the right to repurchase were, in fact, only one transaction of sale pacto de retro which must be construed as an equitable mortgage. Another factor which the respondent court failed to note is the sale of the property to the vendee a retro's brother, thus interposing a supposed innocent third party between the parties to the contract. This second sale was squarely raised in the amended complaint. The records show that this sale and the issuance of a new Transfer Certificate of Title on the same date as the sale cannot be deemed to be bona fide.

Looking into the reason for the inclusion of Article 1602 in the New Civil Code, this Court held in *Santos v. Duata* (14 SCRA 1041) that:

"Article 1602 is a new provision in the Civil Code designed primarily to curtail the evils brought about by contracts of sale with right of repurchase, such as the circumvention of the usury law and pactum commissorium. It particularly envisions contracts of sale with right to repurchase where the real intention of the parties is that the pretended purchase price is money loaned, and in order to secure the payment of the loan a contract purporting to be a sale with pacto de retro is drawn up. (See report of the Code Commission, pp. 61-63.)

The records show that over a six-month period, the mother of the petitioners borrowed money on no less than ten separate occasions from Delfin G. Tolentino. The evidence presented by Mrs. Jovita Ponce Vda. de Capulong alleges that when her total borrowings of P13,000.00 were added to what she claims were usurious interests amounting to P3,250.00, the kited total of P16,250.00 was made to appear as the P21,300.00 purchase price for the lot when actually no money outside of the ten earlier loan transactions was exchanged between the parties.

The added fact that Jovita Capulong remained in actual physical possession of the land and enjoyed the fruits thereof confirms the real intention of the parties to secure the payment of the loans with the land as security. The records show that the private respondents waited for the period of redemption to expire before taking possession of the land. Had the petitioners' mother really executed an absolute sale in favor of respondent Delfin Tolentino, the land which is the object of the transaction should have been delivered to Tolentino and he would have assumed immediate possession after the execution of the questioned deed of sale.

The deed of sale taken together with the companion "right to redeem" contract is only an equitable mortgage. Therefore, private respondent Delfin G. Tolentino could not validly sell the land to his brother Ricardo Tolentino and the latter's wife, Pilar de Joya.

Apart from failing to appreciate the fact that the vendee a retro used two separate documents of sale and option to repurchase to formalize what was basically only one transaction of sale pacto de retro, thus simulating a *Villarica v. Court of Appeals* situation, the respondent court also relied too much on the trial court's failure to find usurious transactions.

The petitioners' mother summarized the loan transactions as follows:

Date Obtained

Actual Loan

25% Interest

Amounts per Documents

Nov. 20, 1964

P5,000.00

P1,250.00

P6,250.00

(Exh. "A")

Dec. 5, 1964

600.00

150.00

750.00

(Exh. "B")

Dec. 21, 1964

1,000.00

250.00

1,250.00

(Exh. "C")

Jan. 6, 1965

1,500.00

375.00

1,875.00

(Exh. "D")

Jan. 19, 1965

1,500.00

375.00

1,875.00

(Exh. "E")

Feb. 18, 1965

1,000.00

250.00

1,250.00

(Exh. "F")

April 17, 1965

600.00

150.00

750.00

(Exh. "G")

April 19, 1965

800.00

200.00

1,000.00

(Exh. "H")

May 21, 1965

500.00

125.00

625.00

(Exh. "I")

May 28, 1965

500.00

125.00

625.00

(Exh. "J")

Total:

P13,000.00

P3,250.00

P16,250.00

According to Mrs. Capulong, she actually borrowed only P13,000.00 but the contracts evidencing the transaction make the total appear as P16,250.00. When the last contract, the one now sought to be set aside, was executed, the loans and interests were allegedly made to appear as a P21,300.00 purchase price, including a P1,000.00 amount given to her on February 18, 1967, when actually no additional money was given when the deed of sale was granted.

The respondent court sustained the trial court's conclusions and reasoned out:

"There is no merit in this appeal. Appellant's theory, that the purchase of her land in the amount of P21,300.00 is the sum total of her principal loan allegedly amounting to only P13,000.00 and the usurious interest thereon at 25% per annum, minus the sum of P1,500.00 which she paid to Dr. Tolentino on November 20, 1965, in concept of interest (Vide p. 10, appellant's brief), does not find support from a mathematical computation based on said theory. Thus from November 20, 1964 until February 18, 1967, when the controverted sale was consummated, a period of 2 years and 3 months, the interest due on P13,000.00 amounted to P7,412.49. This added to the principal of P13,000.00 would give a result of P20,412.49. The balance after deducting therefrom the sum of P1,500.00 would be P18,912.49 only, or P2,387.51 less the sum of P21,300.00."

The petitioners now allege that the Court of Appeals adopted a computation formula in consonance with the respondents' theory which is not supported by the evidence in the records but which is only a theory. The petitioners offer their own theory, thus:

"Upon the other hand, in adopting the formula now being questioned, the respondent Court of Appeals

disregarded a basic rule followed in the computation of interest charges. It also disregarded what petitioners offered was a formula of computation used by the parties in accounting for the consideration of the sale of P21,300.00. In the formula adopted by the respondent Court, the 12% per annum was computed on the principal loan on a straight basis without taking into account the fact that the said amount of loan was obtained on different dates.

"Anent petitioners' suggested formula which was disregarded by respondent Court of Appeals, the same consisted in the following: The actual loan received by Jovita Ponce Vda. de Capulong from Delfin Tolentino of P13,000.00 would command an interest of P6,500.00 computed at the rate of 25% per annum for 2 years disregarding the 3 months from November 20, 1965 to February 18, 1967. The loan of P16,250.00 which is the total of the face value of the various loan contracts would command an interest of P3,250.00 computed at the stipulated rate of 12% per annum for 2 years and 3 months. The said amounts of interest totalling P9,750.00 added to the actual amount of loan received of P13,000.00 less the payment of P1,500.00 on November 20, 1965 in the concept of interest, yields a total of P21,250.00 or P50.00 less than the consideration of P21,300.00 stated in the deed of absolute sale. The result using this formula compared to that in the formula adopted by respondent Court of Appeals suggests that it was error to have disregarded this formula in favor of the other."

Actually, the determination of whether or not there were usurious transactions in this case depends on whom to believe - the borrowers or the lenders? We see no need to disturb the trial court's findings on the credibility of the witnesses. Even if no usury was involved, and this is by no means certain or established to our satisfaction, there is enough evidence in the records to prove that a contract of loan with mortgage was made to appear in paper as an absolute sale with a companion option to buy.

WHEREFORE, the judgment of the respondent court is hereby REVERSED and SET ASIDE. The deed of sale executed by Jovita Ponce de Capulong in favor of Dr. Delfin G. Tolentino is declared as an equitable mortgage. The petitioners are ordered to pay their mortgage indebtedness in the amount of P21,300.00 to the private respondents with legal rate of interest from the time of the expiration of the redemption period on November 20, 1967 until it is fully paid. The deed of sale executed by Delfin Tolentino in favor of Ricardo Tolentino and Pilar de Joya, being null and void, is also CANCELLED. SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and De La Fuente, JJ., concur.

Melencio-Herrera, J., on official leave.

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