

**SPS. ESTELITO BAGADIONG AND REMEDIOS BAGADIONG, ET AL.,
PETITIONERS, VS. PLACIDA VDA. DE ABUNDO, ASSISTED BY HER SON
JOAQUIN ABUNDO, JR., RESPONDENTS.**

G.R. No. 75395. September 19, 1988

Ponente: PARAS, J.

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PARAS, J.:

In Civil Case No. 1043, the Court of First Instance of Catanduanes 10th Judicial District, Branch II declared the contract in question captioned "Deed of Sale Under Pacto le Retro" an equitable mortgage and accordingly rendered judgment, the dispositive portion of which is as follows -

"WHEREFORE, in view of all the foregoing and finding the contract denominated 'Deed of Sale Under Pacto de Retro' (Exh. "A") an equitable mortgage to secure the obligation of P1,500.00, the plaintiff is hereby allowed to redeem the property subject of the contract within thirty (30) days after this decision becomes final by returning to defendant Remedios Bagadiong the principal amount of P1,500.00 plus 12% interest per annum computed from the date of the execution of the said contract, and to effect payment of the principal amount, the defendant may withdraw the amount of P1,500.00 deposited with the Office of the Provincial Treasurer at Virac and for this purpose, the Provincial Treasurer is hereby ordered to deliver to Remedios Bagadiong the aforesaid amount, and after such payment, the plaintiff shall only pay defendant Remedios Bagadiong the adjudged interest. With costs de oficio.

SO ORDERED."

(Decision, p. 5; Record, p. 73-74)

On appeal to the Court of Appeals, the aforesaid decision was affirmed. Hence, the instant petition for review.

It is the contention of petitioners that the contract in question is a valid sale with right to repurchase and not an equitable mortgage.

Hereunder is the said contract:

KNOW ALL MEN BY THESE PRESENTS:

This Deed of Sale with Pacto de Retro made and executed by and between PLACIDA VDA. DE ABUNDO, Filipino, of legal age, widow, with residence and postal address at Viga, Catanduanes, Philippines, hereinafter called the VENDOR, and Remedios R. Bagadiong, Filipino, of legal age, married to Estelito A. Bagadiong, with residence and postal address at Virac, Catanduanes, Philippines, hereinafter called the VENDEE, witnesseth:

That the VENDOR, widow of the late Joaquin Abundo, is the absolute owner of a parcel of land at Higad Nin Banua, Centro, Virac, Catanduanes, more particularly described as follows:

Boundaries:

North - Valentin Francisco West - Jacinto Surtida

South - Mariano Abundo West - Doroteo Camacho

Area - 863.82 sq.m. Tax Decla. No. 14003, Assessed Value - P40.00

Covered by Lot No. 10065, per records of the Bureau of Lands.

That the VENDOR, for and in consideration of the sum of ONE THOUSAND FIVE HUNDRED (P1,500.00) Pesos, Philippine Currency, to her in hand paid and receipt whereof is hereby acknowledged, does hereby SELL, TRANSFER and CONVEY by way of PACTO DE RETRO, unto the said VENDEE, her heirs, and assigns, the above-described property, free from all liens and encumbrances whatsoever.

That the VENDOR, in executing this conveyance, hereby reserves the right to repurchase, and the VENDEE, in accepting same, hereby obligates herself to resell, the property herein conveyed within a period of six (6) months from and after the date of this instrument, for the same price of ONE THOUSAND FIVE HUNDRED (P1,500.00) PESOS, Philippine Currency; provided, however, that if the VENDOR shall fail to exercise her right to repurchase as herein granted within the period stipulated, then this conveyance shall become absolute and irrevocable, without the necessity of drawing up a new deed of absolute sale.

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and hands this 14th day of May, 1971, at Virac, Catanduanes, Philippines.

(SGD.)

(SGD.)

PLACIDA VDA. DE ABUNDO

REMEDIOS R. BAGADIONG

Vendor

Vendee

WITH OUR CONSENT:

(SGD.)

(SGD.)

(SGD.)

PANFILO ABUNDO

ISABEL ABUNDO

IMELDA ABUNDO

(SGD.)

(SGD.)

(SGD.)

JOAQUIN ABUNDO, Jr.

FLORENTINO ABUNDO

EUGENIO ABUNDO

(Exh. A, p. 7, Record)

ACKNOWLEDGMENT

(p. 6, Record)

The petition is meritorious.

Under Article 1602 of the New Civil Code an equitable mortgage is presumed 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 the debt or the performance of any other obligation.

From the evidence on record We find that none of the above instances enumerated under Art. 1602 is present in this case. The vendor, Abundo, has not remained in possession of the land as lessee or otherwise. On the contrary the Vendee, Bagadiong, has been in actual possession of the land from the time of the sale to the present. After the sixth month repurchase period no instrument extending the period of repurchase was executed by the parties. Neither was there a granting by the vendee-a-retro, in favor of the vendor-a-retro, of a new period within which to repurchase the property. As purchaser, Bagadiong never retained a part of the purchase price. In the deed of sale, there is no stipulation that Abundo, the vendor, binds herself to pay the taxes of the land. Nowhere in the deed of sale can there be found a hint that it was made to secure the payment of a debt or the performance of any other obligation.

While there is no trace of any of the cases enumerated under Article 1602 there are evident manifestations of a genuine sale with right of repurchase. They are:

(a) A purchase price which is "adequate";

The deed of conveyance states the purchase price as P1,500.00 for a parcel of riceland (but still barren) with an area of 863.82 sq.m. and an assessed value of P40.00. Incidentally, the said land was purchased by vendor Abundo from Estelita Taconda for P300.00;

(b) An immediate delivery of the property by the vendor to the vendee;

Bagadiong cultivated the same to rice and has since then been improving the property to the exclusion of Abundo;

(c)

The religious payment of the taxes of the land by the vendee, not only during the repurchase period, but during all the years after the expiration of such period;

(d)

The neglect of the vendor to pay the taxes on the land is rather strange, if not irreconcilable behaviour of one who claims to retain the naked ownership of such land, as a mortgagor, and

(e)

The inaction of Abundo to redeem the property for a period of 8 years from the date of the execution of the deed.

All the foregoing circumstances are highly indicative of a contract of sale between the parties rather than a mortgage agreement.

Besides, it is a settled rule that the contract is the law between the parties. When the words of a contract are plain and readily understandable, there is no room for construction. (*Dihiansan vs. Court of Appeals*, 153 SCRA 712)

WHEREFORE, the decision of the Court of Appeals sought to be reviewed is hereby REVERSED and SET ASIDE, and another one rendered dismissing Civil Case No. 1043 of the Court of First Instance of Catanduanes.

No pronouncement as to costs.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

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