

**RENATO S. SANTOS, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE SPOUSES CESAR A. FERRERA AND REYNALDA PEDRONIA AND RUFINO NAZARETH AND DOMINGO NAZARETH, RESPONDENTS.**

*G.R. No. 83664. November 13, 1989*

Ponente: PARAS, J.

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**PARAS, J.:**

Once again, this Court is tasked with determining whether the contract entered into by the parties constitutes an absolute sale or merely an equitable mortgage in this present appeal by certiorari under Rule 45 of the Rules of Court. Petitioners seek the reversal of the decision of the public respondent Court of Appeals which affirmed in toto the decision of the trial court declaring the Deed of Absolute Sale as null and void and finding the contract to be in truth an equitable mortgage.

The antecedent facts of the case, as found by the trial court, are as follows:

“1. Defendants Ferrera and Pedronia were the registered owners of the property in question containing an area of 2,221.86 square meters. The property had been planted to rice for sometime by defendants Nazareths under a tenancy agreement with Romana Aniana Vda. de Ferrera, predecessor-in-interest of defendant Ferrera.

“2. On February 1, 1971 defendants Ferrera and Pedronia executed a deed of sale over the said property in favor of spouses Apolonia and Rufino Santos (Exh. 'A') for the sum of P22,000.00. Upon the issuance of a new title (TCT No. 313883) in the name of vendees (Exh. 'F'), the amount of P16,000.00 was delivered to defendant Ferrera. Simultaneous with the execution of the deed of sale (Exh. 'A'), an instrument entitled Promise To Sell dated February 1, 1971 was executed by the spouses Santos in favor of defendants Ferrera, whereby the former promised to sell back the land in question to the latter for P22,000.00 within a period of six months from February 1, 1971 (Exh. "4").

“3. Defendants Ferrera failed to exercise the right to repurchase the property. On July 30, 1971 spouses Santos executed a deed of absolute sale covering the property in question in favor of their daughter Felicitacion for P30,000.00 on August 14, 1971 (Exh. '5'). On the same date, Felicitacion and Gregorio Santos executed a promise to sell the property in favor of the Ferreras for P30,000.00 within six months.

“4. Notwithstanding, the sale of the property to the Santos, spouses Ferrera continued in possession of the property thru their tenants, the Nazareths. The Santos informed the Nazareths that they are the new owners of the property in question and required the latter to pay the rent for the property in question to them but the Nazareths refused to recognize them as the owner of the property and continued to deliver the harvest shares to the Ferreras. (Records, p. 223)” (pp. 4-5, Decision; pp. 86-87, Rollo)

As a consequence, on August 17, 1977, or nearly seven (7) years after, plaintiffs, through their attorney-in-fact, Renato Santos, filed an action for breach of warranty and damages against the defendants based on the alleged Deed of Absolute Sale. The defendants argue that they never intended to sell their land for such an inadequate

price; that they were in dire need of money so they obtained the loan of P22,000.00; that to secure payment of the loan, defendants were required to execute a Deed of Absolute Sale over the property in dispute, with the agreement, that the deed of sale will merely serve as collateral; that they remain in possession of the land; and that the transfer certificate of title in favor of Apolonia Santos is null and void, the real contract between the parties being one of equitable mortgage only.

The trial court dismissed the complaint, declaring the transaction as an equitable mortgage. We quote:

"Insofar as the price of the property in the deed of absolute sale is concerned, there is evidence that the same is unusually inadequate. The original deed of sale (Exh. 'A') provides that the property in question was sold for P22,000.00, although only P16,000.00 thereof was actually received by defendant Ferreras. On the other hand, there is evidence that the land in question would command a price of P50.00 to P100.00 per square meters, or from P100,000.00 to P200,000.00 for the entire parcel at the time of the transaction in 1971, considering the location thereof at Caniogan, Pasig, Metro Manila, which is within the poblacion or town proper of Pasig.

"In the second place, the vendor (defendants Ferreras) have remained in possession of the property up to the present. This is admitted by plaintiff who would only want defendants to recognize her as the new owner and to pay the accrued and accruing rentals to her. Defendants Ferreras, however, insist that they are the owner and not mere lessees of the land in question.

"In the third place, there is evidence also that after the expiration of the six-month period given to defendants to repurchase the property a new deed of sale was executed by the transferee in favor of defendants giving the latter another six months to repurchase the land in question (see Exh. '6').

"Finally, except for the execution of the deed of sale in question (Exh. 'A'), it may be clearly inferred from the circumstances that the intention of the parties is that the transaction in question was to secure the payment of the amount of P16,000.00 originally extended to and received by the defendants Ferreras by way of loan. These are clearly indicative of the fact that the transaction in question was in reality an equitable mortgage." (Records, pp. 224-225)".

(pp. 5-6, Decision; pp. 87-88, Rollo)

The aforequoted decision was brought on appeal to the Court of Appeals. Finding the conclusions of the trial court to be supported by evidence, the respondent appellate court affirmed in toto the questioned decision.

A motion for reconsideration having been denied, plaintiff, now petitioner, filed the instant appeal by certiorari. After the required pleadings were submitted by the respective parties, this Court resolved to give due course to the petition.

The crucial issue presented before Us for review is whether the transaction between the parties constitutes an absolute sale or only an equitable mortgage.

The instant case calls for an interpretation of the contract between the contending parties. Thus, Article 1370 of the New Civil Code provides:

"If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

"If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former."

Article 1371 of the same code further states:

"In order to judge the intention of the contracting parties their contemporaneous and subsequent acts shall be

principally considered."

In the case at bar, the terms of the transaction in question do not plainly and distinctly indicate the intention of the contracting parties. Since such intention cannot be discerned from the Deed of Absolute Sale executed by the parties, their contemporaneous and subsequent act shall be taken into consideration to be able to determine their true intention.

It is an undisputed fact that respondent spouses were "in dire need of money" to settle certain obligations when they entered into the subject transaction with the petitioners. They entered into a loan agreement but were however made to execute a Deed of Absolute Sale for the amount of P22,000.00. Simultaneous with the execution of the said document, petitioners executed a separate document, which is the Promise to Sell for the same amount of money. From the time the Deed of Absolute Sale was executed up to the time the action was instituted in court, respondent spouses continued to remain in actual physical possession of the land in dispute, through their tenants (Nazareths) who were also made respondents. The existence of this tenancy relationship between the respondents was also admitted by the petitioner.

From the foregoing contemporaneous and subsequent acts of the parties, the trial court found that the contract in issue could not be deemed to be an absolute sale. We agree with the trial court's findings. The acts of the parties indicate the presence of an equitable mortgage. Equitable mortgage has been defined as "one in which although lacking in some formality, form or words, or other requisites demanded by a statute nevertheless reveals the intention of the parties to charge a real property as security for a debt, and contains nothing impossible or contrary to law" (41 Corpus Juris 303). The applicable law, as found in the New Civil Code, provides:

"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 purchase 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 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 the performance of any other obligation."

Equally important is Article 1604 of the same Code, which reads:

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

Firstly, it was found that the lot in question is located within the town proper of Pasig, Metro Manila, behind the elementary school of Caniogan, Pasig, Metro Manila. Petitioner himself admitted the fact that the subject lot is within the town proper of Pasig. Being so, it could thus easily command a much higher price than P22,000.00, considering further that the same measures about 2,221.86 square meters, more or less. The conclusion that the price of the lot is grossly inadequate is well-taken. We are not inclined to disturb the factual findings of the trial court which are supported by evidence. The case of *Labasan v. Lacuesta*, 86 SCRA 16, quoted the Lord Chancellor in *Vernon v. Bethell* (2 Eden, 113), which states: "Necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any term that the crafty may impose upon them."

Secondly, it was clearly established that the private respondents, through their tenant, remained in physical

possession of the land subject matter of the dispute, and enjoyed the fruits thereof despite the execution of the Deed of Absolute Sale. This fact was not disputed by the petitioner. Again, this indicates the existence of a contract of loan with the land given as security.

Thirdly, the respondent court noted that there had always been an extension of the period to repurchase arising from the fact that there were two (2) sets of deed of sale and with a period given to the vendor to repurchase, as seen from the two (2) sets of Promise to Sell. Such fact even maintains the theory than an absolute sale was never intended. Contrary to the allegation of the petitioner, the promise to sell simultaneously executed by the vendee is in truth the right of repurchase granted the vendor, and is within the contemplation of Art. 1602, no. 3 of the New Civil Code. In support of his claim, petitioner cited the case of *Villarica vs. Court of Appeals, et al.*, L-19196, Nov. 29, 1968, which ruled that if a seller has been granted an "option to buy" only (and not a right to repurchase) within a certain period, the sale is absolute, and cannot be considered as an equitable mortgage, even if there is an extension of the period within which to exercise the option. The cited case is inapplicable to the present one. It is worthy to note that the deed of sale in the *Villarica* case was executed on May 19, 1951 and the option to buy on May 25, 1951. In the present case, however, the promise to sell was executed on the same day that the deed of sale was executed. In like manner, the price of the sale in the cited case was considered to be sufficiently adequate, whereas in the instant case it is unusually inadequate. Petitioner also cited the case of *Felicen, Sr., et al. v. Orias*, 156 SCRA 586, which decreed that "if there are no circumstances that may reasonably be accepted as generating some honest doubts as to the parties' intention, the proviso is inapplicable. The reason is quite obvious. If the rule were otherwise, it would be within the power of every vendor a retro to set at naught a pacto de retro, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract - known to him to be in truth a sale with pacto de retro - into an equitable mortgage. x x x The rule would thus be made a tool to spawn, protect and even reward fraud and bad faith, a situation surely never contemplated or intended by law." We find no resemblance between the cited case and the instant one. The *Felicen* case involves only one deed of sale wherein the right to repurchase is already incorporated therein. The contract could not be considered a loan, as its terms were so plain and preclude a construction of some other kind of agreement but one of a sale with pacto de retro. On the other hand, the circumstances attendant in the instant case are obviously different. The right to repurchase (or the Promise to Sell) was embodied in a separate document which was executed on the same date as the deed of sale.

After a careful evaluation of the above-stated circumstances, We find the present case to exhibit several of the familiar badges of a concealed mortgage enumerated by the New Civil Code. According to the pertinent law, presence of any of the circumstances enumerated would be sufficient enough to declare the transaction of absolute sale as one impressed with an equitable mortgage. In the instant case, there is even more than one (1) circumstance indicating an equitable mortgage. Hence, the claim of the petitioner that the decision of the trial court is not based on the supporting evidentiary facts and jurisprudence on the matter is devoid of merit.

WHEREFORE, finding no reversible error in the decision of the Court of Appeals, the petition for review is DENIED for lack of merit.

**SO ORDERED.**

Padilla, Sarmiento, and Regalado, JJ., concur.  
Melencio-Herrera, J., (Chairman), on leave.

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