

**VICENCIO T. TORRES AND SOCORRO S. TORRES, PETITIONERS, VS.
COURT OF APPEALS, CEFERINO ILLUSCUPIDES AND ARACELI
ILLUSCUPIDES, AND EMILIO OLORES, RESPONDENTS.***G.R. No. 92248, December 09, 1992*

Ponente: NOCON, J.

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Before Us is the petition for review on certiorari of petitioners Ceferino Illuscupides and Araceli Camacho-Illuscupides in G.R. No. 93390 from the decision of the Court of Appeals dated January 18, 1990. The petition for review on certiorari in G.R. No. 92248, Vivencio T. Torres et al. vs. Court of Appeals et al., was dismissed by the Court on June 18, 1990[1] for failure to show that a reversible error was committed by the Court of Appeals, and no motion for reconsideration was taken therefrom.

The facts are undisputed: the Illuscupideses are the owners of two (2) adjoining parcels of lands located in the Tapuac District, Dagupan City. The parcels are covered by TCT Nos. 14874 and 15167, and have a combined area of 465 square-meters. The said properties were mortgaged to the Government Service Insurance System (GSIS).

Sometime in 1965, the Illuscupideses contracted Emilio Olores for the construction of a nine (9) door apartment on the parcels of land for the sum of P79,400.00. While construction was going on, another door was added, thereby increasing the cost of the construction to P97,000.00. However, the Illuscupideses could only pay Olores P54,390.51, thus compelling the latter to sue them for the balance before the Court of First Instance of Pangasinan in Civil Case No. D-1955. On November 1969, judgment was rendered in favor of Olores for the unpaid balance with interests and costs. The Illuscupideses then appealed the decision to the Court of Appeals.

Meanwhile, the Illuscupideses received a notice from the GSIS that it was going to foreclose the mortgage for their failure pay the loan when the same became due. To stave off the foreclosure, the Illuscupideses sold the properties to Vivencio Torres and Socorro Torres (petitioners in G.R. No. 92248), as evidenced by the Deed of Sale dated October 19, 1973[2] for P130,000.00, of which the vendees paid the vendors P10,000.00, P6,000.00 and P3,000.00. The vendees likewise paid P51,498.97 to the GSIS. The aforesaid payments were in accordance to the schedule found in the promissory note executed by the parties on October 19, 1973,[3] which provided --

Downpayment (paid on October

1973..... P 10,000.00

Payment to the GSIS

(assumption of mortgage)..... 51,000.00

Cash payment upon issuance of

title in the name of vendee..... P 25,000.00

Balance payable as follows:

Dec. 30, 1974 11,000.00

Dec. 30, 1975 11,000.00

Dec. 30, 1976 11,000.00

Dec. 30, 1977 11,000.00

Provided that no installment

shall be paid until after the

final adjudication of claim of

Engr. E. Olores against vendor..... 44,000.00

P130,000.00

The parties also executed on the same day an agreement[4] whereby the Torreses would "RESELL, RETRANSFER, and RECONVEY" to the Illuscupideses "that certain building, more particularly designated as a ten-door concrete apartment."

Olores found out about the transaction and, fearing that he would not be able to collect from the Illuscupideses in case the Court of Appeals would uphold the decision of the trial court in his favor, filed a new case for rescission of the sale against the Illuscupideses and the Torreses. The Illuscupideses filed a counter-claim against Olores, and a cross-claim against the Torreses, alleging that the Deed of Sale was a pacto de retro sale.

In 1977, the Court of Appeals upheld the decision in the collection case for the unpaid balance of the construction costs in favor of Olores. When said judgment became final and executory, Olores tried to execute the same but was unable to do so.

Meanwhile, trial in the rescission case continued until judgment was rendered on October 7, 1986,[5] the dispositive portion of which provided:

WHEREFORE, premises considered, by preponderance of evidence, judgment is hereby rendered:

1. Dismissing the complaint for rescission filed by plaintiff;
2. Ordering the dismissal of the cross-claim and counterclaims of defendants Illuscupides against defendants Torres and plaintiff;
3. Ordering defendants Illuscupides and/or Torres to deliver the P41,000.00 withheld by them as part of the purchase price of the lots and apartments for the satisfaction of the claim of plaintiff;
4. Ordering defendants Illuscupides to pay plaintiff and defendants Torres the sum of P5,000.00 as attorney's fees each; (and)
5. Ordering the defendants Illuscupides to pay the costs.

Olores and the Illuscupides then appealed to the Court of Appeals, where the case was docketed as CA -G.R. CV No. 14779. On January 18, 1990, the appellate court rendered a decision,[6] the dispositive portion of which reads as follows:

WHEREFORE, the decision dated October 7, 1986 is hereby AFFIRMED insofar as the dismissal of the complaint of plaintiff-appellant Olores, the cross-claim and counter-claim of defendants-appellants

Illuscupides, and the counter-claim of defendant-appellees Torres; REVERSED insofar as Nos. 3, 4 and 5 of the dispositive portion of the Decision are concerned; and the defendants-appellees spouses Vivencio Torres and Socorro Torres are ordered to reconvey in favor of the defendants-cross-claimants spouses Ceferino Illuscupides and Socorro Illuscupides "that certain building more particularly designated as a ten-door apartment in the Deed of Sale executed by and between the above-named parties on October 19, 1973." Without pronouncement as to costs.

With regard to the appeal of the Illuscupideses, the Court of Appeals did not agree with their contention that the sale of the properties to the Torreses was actually a pacto de retro sale, since the terms of the Deed of Sale did not provide for the redemption of the property by the vendors. However, the appellate court discovered that the land and the apartment were sold separately, and only the land appears to have been fully paid. And since the Agreement (Annex "F") provided that the apartment should be resold to the Illuscupideses, the appellate court held that the Torreses should reconvey the apartment to the Illuscupideses.

The Illuscupideses filed a motion asking that the Court of Appeals rule upon the apartment rentals collected by Torreses, since it had ruled that the apartment be reconveyed to them. The appellate court denied the motion on the ground that the matter of the rentals was not raised as assignment of error in their brief.

From said resolution, the Illuscupideses elevated the case to this Court on a petition for review for certiorari. The Torreses filed a separate petition for review on certiorari, but the same was dismissed by this Court on June 18, 1990. The dismissal of the Torreses' petition is now final in view of their failure to file a timely motion for reconsideration.

In their petition, the Illuscupideses allege that the Court of Appeals erred in (1) not construing the Deed of Sale of October 19, 1973 to be a pacto de retro sale; and (2) in not ruling upon the rentals collected by the Torreses from the apartment after it had ordered the reconveyance of the apartment to the Illuscupides.

The petition is totally devoid of merit.

The Court of Appeals was correct in construing the Deed of Sale as an absolute sale inasmuch as the terms thereof are clear on the matter. The Illuscupideses argue, however, that the appellate court should have taken into account the circumstances surrounding the execution of the deed, particularly the fact that an Agreement to resell the apartment was executed on the very same day as the deed of sale.

The argument is unavailing. Even if this Court were to agree with the Illuscupideses that parole evidence may be allowed to add to the terms of the deed of sale, this Court has held in the case of Villarica, et al. vs. Court of Appeals, et al.,^[7] that --

[t]he 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 to repurchase but some other right like an option to buy in the instant case.^[8]

As with regard to the Illuscupideses' second contention, the Court of Appeals acted correctly in not passing upon the rentals collected by the Torreses since the Illuscupideses did not ask for the same in their original cross-claim.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto. Costs against petitioners Illuscupideses.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos Jr., JJ., concur.

[1] Rollo of G.R. No. 92248, p. 59.

[2] Exhibit "B", Exhibit "2-A" (Illuscupides), Exhibit "1" (Torres), Records, p. 98.

[3] Exhibit "C", Exhibit "4" (Illuscupides & Torres), Records, p. 207.

[4] Exhibit "3" (Illuscupides & Torres), Records, p. 206.

[5] Penned by Judge Conrado V. Posadas, Records, p. 331-345.

[6] Justice Artemon D. Luna, ponente; Justice Manuel C. Herrera and Eduardo R. Bengzon, concurring.

[7] L-19196, 26 SCRA 189 (1968).

[8] 26 SCRA at 193.

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