

**HEIRS OF DOMINGA TABORA VDA. DE MACOY, REPRESENTED BY
GENEROSO MACOY, PETITIONERS, VS. HON. COURT OF APPEALS,
JESUS F. REDILLAS AND ANATALIA ELON, RESPONDENTS.**

G.R. No. 95871. February 13, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari seeking reversal of the decision of public respondent Court of Appeals in CA-G.R. CV No. 12062, entitled “Jesus F. Redillas, et al., Plaintiffs-Appellants v. Heirs of Dominga Tabora Vda. de Macoy, represented by Generoso Macoy, Defendants-Appellees,” dated September 4, 1990, which set aside the decision of the Regional Trial Court of Daet, Camarines Norte; and its resolution dated October 17, 1990, which denied the motion for reconsideration.

The antecedent facts are, as follows:

Dominga Tabora Vda. de Macoy was the owner of a rice land, with an area of 3.0082 hectares, located at Bagasbas, Daet, Camarines Norte. Her ownership thereof was evidenced by TCT No. T-7520 of the Register of Deeds of Camarines Norte (pp. 27-B-28, Records). She acquired the land from spouses Patrocinio and Pablo Serrano on January 27, 1964, for a consideration of P11,000.00 (p. 191, Records). On December 28, 1970, she executed a document which was denominated “Pabilihang Mabibili-Muli” or sale with a right to repurchase in favor of private respondents spouses Jesus F. Redillas and Anatalia Elon, for the sum of P6,000.00 over the land (p. 4, Records). Among other things, it was provided therein that the period of repurchase is between December 29, 1973 and December 29, 1975.

Dominga Tabora Vda. de Macoy died in February, 1972, leaving as heirs petitioners Julieta Macoy Pongco, Rufina, Francisco, Miriam and Herson Macoy and Teopista Macoy de Zantua. Alleging failure of petitioners to repurchase the land, private respondent Jesus F. Redillas executed an Affidavit of Consolidation of Ownership on May 31, 1977 (p. 26, Records). On July 21, 1977, he and his wife filed a petition for Recording of Consolidation of Ownership before the Regional Trial Court of Daet, Camarines Norte, docketed as Civil Case No. 2933 (pp. 1-3, Records).

In the trial court’s order dated January 16, 1978, it declared petitioners in default for failure to file an answer to the petition (p. 16, Records). Private respondents then presented their evidence and, on February 1, 1978, judgment was rendered by the trial court ordering consolidation of ownership and registration of title over the land in the name of private respondents (pp. 17-18, Records). Accordingly, TCT No. T-7520 was cancelled and TCT No. T-14665 was issued on February 3, 1978, in the name of private respondent Jesus F. Redillas, married to private respondent Anatalia Elon (pp. 188-189, Records).

On June 16, 1978, private respondents mortgaged the land to the Rural Bank of Jose Panganiban, Inc. to secure a loan of P15,000.00. On July 17, 1980, they borrowed an additional amount of P10,000.00 from the bank.

On October 4, 1978, petitioners filed a petition for relief from the trial court's decision alleging (pp. 33-34, Records):

“x x x.

“III

“That respondents (petitioners) could not possibly have filed their Answer to the Petition for Consolidation of Ownership and gone to trial for the following reasons:

“1. Summons have (sic) been improperly served:

“a) The petition for Consolidation of Ownership alleged that respondents (petitioners) therein is (sic) represented by one Generoso Macoy, when there is NO such representative of the respondents (petitioners);

“b) Not one of the Heirs of Dominga Tabora Vda. de Macoy resides at 2004 Muñoz St., Paco, Manila and/or 1970-B Anak Bayan, Paco, Manila as mentioned in the Petition;

“2. Not all the Heirs of Dominga Tabora Vda. de Macoy were made party respondents.

“3. There are other factors constituting fraud, mistake, accident or excusable negligence which deprived the respondents (petitioners) of due process of law; ATTACHED HEREWITH IS AN AFFIDAVIT OF ONE OF THE HEIRS OF DOMINGA TABORA VDA. DE MACOY.

“IV

“That this petition is being filed within sixty (60) days after the respondents (petitioners) have learned of the aforesaid Decision and not more than six (6) months after such judgment was entered;

“V

“That respondents (petitioners) have good and substantial defense (sic) in this action, to wit:

1. The instrument in question is not one of Pacto de Retro but rather a Deed of Antichresis or the least an Equitable Mortgage;

2. The consideration is unconscionable;

3. There was tender of payment of the redemption price, and in this connection, the respondents (petitioners) are willing to deposit with the Clerk of Court the necessary amount to effect legal redemption;

x x x.”

On October 19, 1978, finding the petition meritorious, the trial court set aside its previous order and decision and granted new trial (pp. 40-41, Records). Consequently, petitioners, through their representative Teopista Macoy de Zantua, filed their answer to the petition of private respondents. They alleged that the document executed by the late Dominga Tabora Vda. de Macoy was not a sale with a right to repurchase but an equitable mortgage or a contract of antichresis. They alleged further that even assuming it to be a sale with a right to repurchase they nevertheless had thirty (30) days from final judgment under Article 1606 of the Civil Code within which to redeem the land. During the trial, the trial court, upon motion of petitioners, ordered the Register of Deeds to immediately restore TCT No. T-7520 in the Registry office (pp. 215-216, Records).

On July 16, 1986, judgment was rendered by the trial court in favor of petitioners. It declared the document to be in fact an equitable mortgage on the basis of its findings that the consideration thereof was inadequate and the

taxes on the land continued to be paid under the name of Dominga Tabora Vda. de Macoy even up to 1977. It also found that petitioner Teopista Macoy de Zantua offered to private respondents the amount of P6,000.00 in order to repurchase the land but she was turned down, thus, she deposited said amount in court on September 18, 1980. The dispositive portion of its decision reads (pp. 243-244, Records):

“WHEREFORE, judgment is hereby rendered for the Heirs of Dominga Tabora Vda. De Macoy who retains ownership of Lot 2032 covered by Transfer Certificate of Title No. T-7520 of the Registry of Deeds of Camarines Norte by automatic operation of law when payment of the obligation has been effected when the amount of P6,000.00 was deposited with the Clerk of Court on September 18, 1980; to pay defendant-heir Teopista M. Zantua transportation expenses for having gone to Daet from Manila and from Manila to Daet for hearings since 1978 up to 1986 in the sum of P7,000.00; likewise to pay an additional sum of P14,000.00 representing attorney’s fees paid by defendant-heir Teopista M. Zantua to her two (2) counsel; and finally the sum of P10,000.00 (as) moral, punitive, exemplary and corrective damages.

“The Register of Deeds of Camarines Norte is hereby ordered to cancel the annotation of the sale with pacto de retro dated December 28, 1970 upon Transfer Certificate of Title No. T-7520 on the ground that the repurchase therein mentioned was effected legally on September 18, 1980, in spite of petitioners’ refusal to allow defendants-heirs to exercise their right to repurchase reserved to their mother Dominga Tabora Vda. de Macoy in the document.

“With costs.

“Let copies of this Decision be served upon the Register of Deeds of Daet, Camarines Norte, and the National land Titles and Deeds Registration Administration, Ministry of Justice.

“SO ORDERED.”

From this judgment, private respondents appealed to public respondent Court of Appeals. On September 4, 1990, respondent court reversed the trial court’s decision, the dispositive portion of which, reads (p. 36, Rollo):

“WHEREFORE, the decision appealed from is REVERSED and judgment is hereby rendered granting consolidation of ownership in favor of the plaintiff-appellants and the Register of Deeds of Camarines Norte is ordered to cancel TCT No. T-2520 (sic) in the name of Dominga Tabora Vda. de Macoy and issue a new one in the names of the plaintiff-appellants.

“Costs against the defendant-appellees.

“SO ORDERED.”

On October 17, 1990, the motion for reconsideration was denied for lack of merit (p. 53, Rollo). Hence, the present petition.

Petitioners raise the following errors committed by respondent court:

- 1) it set aside their petition for relief from judgment; and
- 2) it held that the transaction in question was a pacto de retro sale.

They asseverate that the finding of the trial court relative to the invalidity of the service of summons on them is vital and must be respected. The respondent court should have treated their petition for relief from judgment as an action for annulment of judgment since it was aimed at annulling the trial court’s decision. Even assuming that the transaction was pacto de retro, they have validly exercised their right to repurchase the land. The consideration in the transaction was inadequate because when the land was acquired for P11,000.00 in 1964, its market value had increased considerably at the time of the execution of the document in 1970. In fact, private respondents had

obtained a loan for P25,000.00 using it as collateral. The fact that in the receipts of payment there is no showing that the real estate taxes were paid by private respondents, as is usually written across the body of the receipts if so paid by a person other than the owner named thereon, shows that Dominga Tabora Vda. de Macoy paid the taxes during the period of repurchase.

On the other hand, private respondents contend that the summons served on petitioner Teopista Macoy de Zantua, through her sister petitioner Miriam Macoy, who both live in the same address, is valid. Article 1606, paragraph 3, of the Civil Code is not applicable, as held in the case of Felicen, Sr., et al. v. Orias, et al., G.R. No. L-33182, December 18, 1987, 156 SCRA 586. There are absolutely no indications from which to draw the conclusion that the transaction is one of equitable mortgage. The price of the sale, which is more than one half (1/2) of the acquisition cost is not inadequate. Private respondents have paid the real estate taxes from the time they took possession thereof up to 1977.

The trial court, in setting aside its January 16, 1978 order and February 1, 1978 decision, rationalized (pp. 40-41, Records):

“x x x since Miriam is not the representative of the heirs of the late Dominga Tabora Vda. de Macoy, her receipt if (sic) the summons, if at all, is valid only in so far (sic) as it concerns her. It cannot bind the other heirs of the deceased Dominga Tabora Vda. de Macoy. Consequently, since no valid service of summons was effected on Teopista Macoy de Zantua, Julieta, Francisco, Rufina and Herson Macoy, the order of this Court declaring them in default and the consequent judgment against them is null and void for lack of due process.

“The fact that the six-month period has already expired under Rule 38 of the Rules of Court is of no moment because a void judgment never acquires finality. It can be attacked anytime.”

The respondent court viewed the validity of the service of summons and the propriety of the petition for relief from judgment differently. According to it (pp. 34-35, Rollo):

“x x x. For the fact is that Miriam is a sister of Teopista Macoy and one of the heirs of Dominga Tabora Vda. de Macoy. x x x.

“x x x, Teopista Macoy admitted that she learned of the judgment rendered on February 1, 1978 in February 1978 (TSN, p. 16, Nov. 5, 1980) but her petition was filed only on October 4, 1978. x x x.”

We adopt the finding of the trial court that no valid service of summons was effected on the other petitioners. Therefore, its February 1, 1978 decision is void. Service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. This process is for the benefit of the defendant, and is intended to afford the latter an opportunity to be heard on the claim against him (*Keister v. Navarro*, G.R. No. L-29067, May 31, 1977, 77 SCRA 209). In the absence of such service or a valid waiver thereof, the trial and judgment are void (*Venturanza, et al. v. Hon. Court of Appeals, et al.*, G.R. No. 77760, December 11, 1987, 156 SCRA 305; *Filmerco Commercial Co., Inc., et al. v. Hon. Intermediate Appellate Court*, G.R. No. 70661, April 9, 1987, 149 SCRA 193; *Consolidated Plywood Industries, Inc. v. Bрева, et al.*, G.R. No. 82811, October 18, 1988, 166 SCRA 589; *Phil. National Construction Corp. v. Ferrer-Calleja, et al.*, G.R. No. 80485, November 11, 1988, 167 SCRA 294).

There is no debate that the petition for relief from judgment was filed by petitioners beyond the reglementary period prescribed by Rule 38, Section 3, of the Rules of Court. However, inasmuch as the petition was aimed at annulling the February 1, 1978 decision based on lack of jurisdiction over petitioners (p. 34, Records), We treat it as an action for annulment of judgment. And, an action to declare the nullity of a void judgment does not prescribe (*Ang Lam v. Rosillosa and Santiago*, 86 Phil. 447; *Paluwagan ng Bayan Savings Bank v. King, et al.*, G.R. No. 78252, April 12, 1989, 172 SCRA 60).

The foregoing discussions lead Us to no other conclusion that the trial court was correct in setting aside its February 1, 1978 decision. Yet, We regret that Our favorable action on this petition ends here. After a judicious consideration of the merits of this case, We find that respondent court did not commit any reversible error in granting consolidation of ownership in favor of private respondents.

We quote hereunder the body of the questioned document (p. 4, Records):

“DAPAT MALAMAN NG SINOMANG MAKABABASA NITO:

“Itong PABILIHANG MABIBILI-MULI (Pacto--de-retro Sale) na ito ay ginawa nina: DOMINGA TABORA VDA. DE MACOY, may sapat na gulang, balo, naninirahan sa 2004 Muñoz St., Paco, Manila, na tatawagin sa kasulatang ito na NAGPABILI, at JESUS F. REDILLAS, may sapat na gulang, Pilipino, asawa ni Anatalia Elon, naninirahan sa Daet, Camarines Norte, na tatawagin sa kasulatang ito na BUMILI.

“NAGPAPATOTOO

“Na ang NAGPABILI alang-alang sa halagang ANIM NA LIBONG PISO (P6,000.00), salaping Pilipinok (sic), na (sa) kaniyang tinanggap ng (sic) buong kasiyahan galing sa BUMILI, sa pamamagitan ng kasulatang ito ay kaniyang ipinagbibili, inililipat at ipinaubaya sa paraang bilihang-mabibili muli (pacto-de-retro) sa nasabing BUMILI, sa kaniyang mañga tagapagmana at lilipatan, ang lahat niyang pagkamayari at pakialam sa sumusunod na parsolang lupain:

‘x x x.’

“at ang nasabing lupain ay pinanagutan ko (WARRANTY) na walang ano mang lingatong o pagkakautang kahi’t kanino mang tao.

“Datapwa’t kong (sic) ako, ang NAGPABILI, ay matubos ko ang nasabing lupain sa datinghalagang (sic) P6,000.00 pagkalipas ng tatlong taon simula ngayon – ñguni’t hindi naman lilipas sa limang taon mula ng (sic) lagdaan ang kasulatang ito - ang usapang ito ay mawawalan ng bisa at kabuluhan; ñguni’t kung hindi ko naman matubos ito sa taning napanahon na aming pinagkasunduan, ang dokumentong ito ay magkakaroon ng bisa alinsunod sa ipinaguutos ng Batas. Samakatuwid, ang lupaing ito ay matutubos lamang ng NAGPABILI sa BUMILI simulang Desyembre 29, 1973 at hindi lilipas sa Desyembre 29, 1975.

“x x x.”

Under Article 1602 of the Civil Code, 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.

Based on the evidence on record, none of the aforementioned instances is present in this case. Rather, evident manifestations of a genuine sale with right to repurchase exist. The price of the sale is not unusually inadequate.

The price fixed in a pacto de retro sale is not necessarily the true value of the land sold (*De Ocampo, et al. v. Lim*, 38 Phil. 579). The reason is that the vendor has the right to repurchase the land. The practice is to fix a relatively reduced price (but not a grossly inadequate one) in order to afford the vendor a retro every facility to redeem the land, unlike in an absolute sale where the vendor, in permanently giving away his property, tries to get, as compensation, its real value (*Feliciano v. Limjoco, et al.*, 41 Phil. 147; *Claridad v. Novella*, 105 Phil. 756; *Vda. de Lacson, et al. v. Granada, et al.*, 111 Phil. 477; *Amigo, et al. v. Teves*, 96 Phil. 252). *Dominga Tabora Vda. de Macoy* did not bind herself to pay the real estate taxes on the land (see *Vda. de Zulueta v. Octaviano, et al.*, G.R. No. 55350, March 28, 1983, 121 SCRA 314). There is not even any proof that she paid the real estate taxes thereon since the time of the sale. On the contrary, Exhibit “E” (p. 31, Records) shows that private respondent *Anatalia Elon* paid the real estate taxes thereon for the calendar years 1974-1977. Inasmuch as the document is plainly a pacto de retro sale, it cannot be considered a loan with mortgage (*International Banking Corporation v. Martinez, et al.*, 10 Phil. 252). We reiterate that the contract is the law between the parties. When the words of a contract are clear and readily understandable, there is no room for construction (*Dihiansan, et al. v. Court of Appeals, et al.*, G.R. No. L-49539, Sept. 14, 1987, 153 SCRA 712). The freedom of contract must be maintained and respected.

Article 1606, paragraph 3, of the Civil Code provides that:

However, the vendor may still exercise the right to repurchase within 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.

Petitioners invoke this provision as an alternative legal remedy in the event that the document be finally declared a pacto de retro sale. But Our query is -- can they avail of this provision? The case of *Felicen, Sr., et al. v. Orias, et al.* (supra), which was cited by private respondents, supplies the answer. We were distinct in Our pronouncement therein that (at pp. 589-591):

“The application of the third paragraph of Article 1606 is predicated upon the bona fides of the vendor a retro. It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with pacto de retro, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or other obligation. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper: that the vendor a retro be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract to be a true sale with right to repurchase. Conversely, if it should appear that the parties’ agreement was really one of sale--transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property--and there are no circumstances that may reasonably be accepted as generating some honest doubt 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. As postulated by the petitioner, ‘to allow herein private respondents to repurchase the property by applying said paragraph x x to the case at bar despite the fact that the stipulated redemption period had already long expired when they instituted the present action, would in effect alter or modify the stipulation in the contract as to the definite and specific limitation of the period for repurchase (2 years from date of sale or only until June 25, 1958) thereby not simply increasing but in reality resuscitating the expired right to repurchase x x and likewise the already terminated and extinguished obligation to resell by herein petitioner.’ 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 the law.

“This Court has already had occasion to rule on the proper interpretation of the provision in question. In *Adorable v. Inacala*, where the proofs established that there could be no honest doubt as to the parties’

intention, that the transaction was clearly and definitely a sale with pacto de retro, the Court adjudged the vender a retro not to be entitled to the benefit of the third paragraph of Article 1606.”

ACCORDINGLY, the petition is hereby DENIED. The decision of the Court of Appeals dated September 4, 1990 and its resolution dated October 17, 1990 are hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, and Grino-Aquino, JJ., concur.

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