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FIRST DIVISION

[G.R. NO. 166183, January 20, 2006]

SPS. TITO ALVARO AND MARIA VALELO, PETITIONERS, VS. SPS. OSMUNDO TERNIDA AND JULITA RETURBAN, COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari under Rule 45 of the Rules of Court are the July 30, 2004 Decision[1] of the Court of Appeals in CA-G.R. CV No. 61985 and the November 3, 2004 Resolution[2] which denied petitioners' motion for reconsideration.

The antecedent facts are as follows:

Respondent-spouses Osmundo Ternida and Julita Returban are the owners of the contested property, an 8,450 sq. m. parcel of non-irrigated riceland situated at Barangay Labney, San Jacinto, Pangasinan.

On May 26, 1986, Julita mortgaged the land to the spouses Salvador de Vera and Juanita Orinion for P28,000.00. As testified[3] to by Julita, she was made to sign a Deed of Pacto de Retro Sale[4] with Salvador who explained to her that what she signed was a mortgage document. As worded, the document provided that Julita has three years from the date of the execution of the document to repurchase the land.

After a year, Salvador executed a Deed of Transfer of Mortgage[5] in favor of the spouses Jose Calpito and Zoraida Valelo for a consideration of P32,000.00. Thereafter, Julita requested from the latter for an additional amount of P3,000.00, at which point, she was asked[6] to sign a Deed of Sale with Right to Repurchase.[7]

On May 22, 1990, Julita again asked for an additional amount of P1,000.00 but she was informed by Jose Calpito that they have transferred the mortgage to the spouses Tito Alvaro and Maria Valelo, herein petitioners. Julita thus went to the petitioners who gave her the additional amount of P1,000.00. Julita claimed that petitioners asked her to sign a document that she believed was a mortgage document but later on turned out to be a Deed of Absolute Sale[8] over the contested property.

When Julita tried to redeem the property from the petitioners, the latter refused and claimed that they had purchased the property and were in fact issued Tax Declaration No. 2747.[9]

Consequently, on October 1, 1997, respondents filed a complaint for Annulment of

Deed of Sale Documents and Tax Declaration No. 2747 with the Regional Trial Court of Dagupan City, docketed as Civil Case No. 97-01876-D.[10] After trial on the merits, the trial court dismissed the complaint for lack of cause of action.[11] Respondents filed a motion for reconsideration which was however denied.[12]

On appeal, the Court of Appeals reversed the decision of the trial court, thus:

> WHEREFORE, the appeal is granted and the Decision dated September 10, 1998 of the trial court is reversed and set aside. The Deed of Absolute Sale dated May 22, 1990 between plaintiff-appellant Julita Returban and defendants-appellees spouses Tito Alvaro and Maria Valelo shall be construed as an equitable mortgage and the Tax Declaration 2747 issued in the name of spouses Tito Alvaro and Maria Valelo is annulled. Consequently, plaintiffs-appellants are entitled to redeem the property which shall be effected upon payment of their mortgage debt to defendants-appellees.
>
> SO ORDERED.[13]

Hence this petition for review on the following grounds:

1. THAT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT DECLARED THE TRANSACTION BETWEEN THE PARTIES AS EQUITABLE MORTGAGE AND NOT AN ABSOLUTE SALE;

2. THAT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT DECLARED THE ANNULMENT OF TAX DECLARATION 2747 IN THE NAMES OF THE PETITIONERS;

3. THAT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT FAILED TO APPLY THE JURISPRUDENTIAL RULE LAID DOWN IN ABILLA VS. GOBONSENG, JR., 374 SCRA 51;

4. THAT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT FAILED TO APPLY THE PRINCIPLE OF LACHES AND ESTOPPEL;

5. THAT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT FAILED TO AWARD DAMAGES IN FAVOR OF THE PETITIONERS.[14]

Primarily, petitioners contend that the Court of Appeals erred when it declared the transaction between the parties to be an equitable mortgage instead of an absolute sale.

The petition lacks merit.

An equitable mortgage is defined as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law.[15] For the presumption of an equitable mortgage to arise, two requisites must concur: (1) that the parties

entered into a contract denominated as a sale; and (2) that their intention was to secure an existing debt by way of a mortgage.[16]

Consequently, the nonpayment of the debt when due gives the mortgagee the right to foreclose the mortgage, sell the property and apply the proceeds of the sale to the satisfaction of the loan obligation.[17]

We find no merit in petitioners' contention that in the Deed of Absolute Sale executed between them and Julita, the latter totally conveyed her ownership over the disputed property. We have consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature. The decisive factor is the intention of the parties to the contract – as shown by their conduct, words, actions and deeds – prior to, during and after executing the agreement.[18]

While there is no single conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage,[19] however, the Civil Code enumerates several instances when a contract is clothed with the presumption that it is an equitable mortgage, to wit:

> Article 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. (Emphasis added)

It is an established rule that the presence of even one of the circumstances set forth in Article 1602 is sufficient to declare a contract of sale with right to repurchase an equitable mortgage.[20] Thus, under the wise, just and equitable presumption in Article 1602, a document which appears on its face to be a sale – absolute or with *pacto de retro* – may be proven by the vendor or vendor-a-*retro* to be one of a loan with mortgage. In such case, parol evidence becomes competent and admissible to prove that the instrument was in truth and in fact given merely as a security for the payment of a loan. And upon proof of the truth of such allegations, the court will