

FIRST DIVISION

[G.R. NO. 137247, August 07, 2006]

ANATALIA B. RAMOS, PETITIONER, VS. SPOUSES DOMINGO A. DIZON AND EDNA MEDINA DIZON, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* of the Decision dated 16 October 1998^[1] and the Resolution dated 13 January 1999,^[2] both promulgated by the Court of Appeals in CA-G.R. CV No. 48544, affirming the Decision dated 24 January 1995^[3] of the trial court in Civil Case No. 93-66439, a petition for registration of consolidation of ownership over real property filed by herein petitioner.

In the Petition filed before the Regional Trial Court (RTC), Manila, Branch 45, and docketed as Civil Case No. 93-66439, petitioner alleged that respondents are the owners of an undivided one-half portion of a parcel of land with an area of about 89.35 square meters located in Limay Street, Manuguit Subdivision, Tondo, Manila, as evidenced by Transfer Certificate of Title (TCT) No. 172510 of the Registry of Deeds of Manila; that on 1 February 1988, respondent Domingo executed a Special Power of Attorney (SPA) authorizing Elpidio Domingo to sell one-half portion of said parcel of land; that Elpidio, acting pursuant to the provisions of the SPA sold, with a right to repurchase within five months, one-half of the land covered by TCT No. 172510 to petitioner; and that respondent Domingo failed to redeem or repurchase the disputed land within the five-month period provided for under the Deed of Sale Under *Pacto de Retro*, thus, ownership over the subject land was consolidated in petitioner.

Respondent Domingo filed an Answer/Opposition^[4] to the Petition alleging that the SPA was executed for the purpose of enabling Elpidio to secure a loan of P150,000.00 by using Domingo's share in the land covered by TCT No. 172510 as security. The proceeds of the loan was supposed to be used for the construction of a duplex residential house to be supervised by Elpidio. However, Elpidio obtained a loan of P350,000.00 and used a substantial portion thereof for his personal advantage and benefit. As Elpidio had exceeded his authority, Domingo claimed that he revoked the SPA through several letters and by a formal notice of revocation sent by his counsel. As for the *pacto de retro* sale, Domingo maintains that the same was simulated as Elpidio had already obtained a loan totaling P350,000.00 from petitioner as evidenced by a Real Estate Mortgage executed by the two of them. In any case, he claims that the *pacto de retro* sale should be treated as an equitable mortgage which cannot be enforced through a petition for consolidation of ownership.

Elpidio likewise filed his Answer^[5] to the Petition but this was ordered stricken off

the record by the trial court judge^[6] as it appeared that only respondent Domingo was the defendant and oppositor in the case before the court *a quo*.

The Pre-Trial Order enumerated the parties' respective exhibits, to wit:

PLAINTIFF'S EXHIBITS:

1. Exh. "A" - Transfer Certificate of Title No. 172510 of the Registry of Deeds of Manila – admitted;
2. " "B" - Special Power of Attorney – admitted with the qualification that it was revoked later on;
3. " "C" - Deed of Sale under Pacto de Retro – not admitted;

DEFENDANT'S EXHIBITS:

1. Exh. "1" - Promissory Note dated April 17, 1988, for the amount of P 150,000.00 executed by Elpidio Dizon in favor of Anatalia Ramos – admitted the contents subject to the presentation of the original document;
2. " "2" - Promissory Note for P 150,000.00 dated April 17, 1988 executed by Elpidio Dizon, mortgagor – admitted.
3. " "3" - Deed of Real Estate Mortgage executed by Elpidio R. Dizon, in favor of Anatalia Ramos, Mortgagee, over the property covered by TCT No. 172510 – admitted;
4. " "4" - Deed of Sale under Pacto de Retro, which was previously marked as Exh. "C" for the petitioner – admitted;
5. " "4-A" - Second page of Exh. "4"
6. " "4-a-1" - Typewritten name of Domingo A. Dizon;
7. " "5" - Special Power of Attorney;
8. " "5-A" - Second page thereof;
9. " "6" - Letter of Revocation of the Special Power of Attorney (Reserved Exhibit);
10. " "7" - Transcript of Stenographic Notes in Civil Case No. 90-51838 (Reserved).^[7]

During the trial of the case, petitioner herself took the witness stand and testified^[8] that on 10 August 1988, Elpidio sold to her, with a right to repurchase, one-half of a parcel of land located in Limay, Tondo, Manila, which was owned by respondent Domingo. According to her, Elpidio was then authorized by a SPA executed by respondent Domingo to enter into said transaction with her. It was agreed upon that the owner (referring to respondent Domingo) had five months within which he could buy back the property from her. Respondent Domingo, however, failed to exercise

his right forcing her to institute the Petition for consolidation of ownership before the court *a quo*.

Petitioner presented Elpidio as her second witness and he essentially reiterated what petitioner had stated in her testimony. After the conclusion of Elpidio's testimony, petitioner offered into evidence Exhibits "A," "B," and "C,"^[9] all of which were admitted by the trial court. With this, petitioner rested her case.

In the same hearing, Elpidio was subjected to cross-examination during which he declared that he owns the two-door residential apartment built on respondent Domingo's share in the land covered by TCT No. 172510. The apartment building, however, encroaches upon the other half portion of the said land which is owned by Elpidio's brother, Ricardo Dizon. Sometime in March 1988, he offered to sell to respondent Domingo, for P550,000.00, the partially built two-door structure, as well as Ricardo's portion of the land on which a part of said building stood. Respondent Domingo agreed to Elpidio's proposal such that he remitted to the latter the amount of P207,000.00. Later, he tried to collect from respondent Domingo the remainder of the purchase amount. Respondent Domingo then suggested that Elpidio secure a loan from the Government Service Insurance System (GSIS) in order to complete the construction of the two-door apartment. Adopting respondent Domingo's suggestion, Elpidio secured a loan from petitioner in the initial amount of P150,000.00 evidenced by a promissory note dated 17 April 1988 and marked as Exhibit "1" for respondent Domingo. In order to secure this loan, petitioner and Elpidio agreed to execute a real estate mortgage over the land embraced by TCT No. 172510. The real estate mortgage was marked as Exhibit "3." Subsequently, the amount of the loan extended by petitioner was increased to P350,000.00 as shown by Exhibit "3-A" – a document entitled "Increase in the Loan Value of Real Estate Mortgage dated April 24, 1988." Elpidio likewise admitted before the court that the amount of P350,000.00 appearing in the *pacto de retro* sale dated 10 August 1988 was the same sum of money he earlier received from petitioner for which the promissory note and Real Estate Mortgage with its subsequent increase in loan value were executed.

It was also revealed during Elpidio's cross-examination that respondent Domingo had previously filed a case for specific performance and/or rescission against him, docketed as Civil Case No. 90-51838 and assigned to RTC Manila, Branch XLI.

The subject matter of said action was the purported contract of sale between respondent Domingo and Elpidio involving the same apartment building and a portion of Ricardo's land. The trial court decided in favor of respondent Domingo and disposed of the case in the following manner:

PREMISES CONSIDERED, judgment is hereby rendered -

- 1) declaring the contract of sale entered into by and between plaintiff [respondent Domingo] and defendant [Elpidio] over that undivided portion of Lot 27-B-3 in the name of Ricardo Dizon and the building constructed thereon rescinded:

- 2) ordering defendant to pay plaintiff as follows -

- a) the sum of P207,000.00 with interest thereon at the legal rate from January 29, 1990 until the same is fully paid;
- b) the sum of P350,000.00 with interest thereon at the rate of 3% a month from January 29, 1990 until the same is fully paid; and
- c) the sum of P50,000.00 as and by way of attorney's fees and expenses of litigation.

The reliefs prayed for by the Intervenor is hereby denied.

Costs against the defendant.^[10]

Parenthetically, the trial court in Civil Case No. 90-51838 made the following pronouncement with respect to the transaction between petitioner and Elpidio:

Plaintiff's evidence, however, which is not controverted by the defendant shows that he has paid defendant the total sum of P207,000.00 in cash. In addition, defendant as attorney-in-fact of plaintiff mortgaged plaintiff's property to Anatalia Ramos for the total sum of P350,000.00 which defendant received and appropriated for his own personal benefit. To secure payment of the same, he sold plaintiff's property to Anatalia Ramos on a pacto de retro arrangement for the aforesaid sum. While the deed evidencing the sale was denominated as a Deed of Sale under Pacto de Retro, in view of the testimony given by the defendant, the court is inclined to believe that the transaction was actually in the nature of an equitable mortgage. Defendant testified that the consideration of the sale is a loan. Interest payment thereon has been agreed upon as 3% per month. The property remained in the possession of defendant as attorney-in-fact of plaintiff.^[11]

The decision in Civil Case No. 90-51838 was pending appeal at the time Elpidio took the witness stand.^[12]

On 19 December 1994, respondent Domingo's counsel manifested before the trial court in Civil Case No. 93-66439 that he was no longer presenting testimonial evidence; instead, he requested that the following documents be marked in evidence:

Exhibits "6" - Decision dated March 20, 1992

"6-A" - Dispositive portion thereto

"7" - TCT No. 172510 – entry thereon

"7-A" - Registered owners^[13]

Also, respondent Domingo's counsel was given ten days to submit his formal offer of evidence in writing and petitioner was given the same period of time to file her comment or opposition thereto after which the case would be submitted for resolution.^[14]

The trial court, however, prior to the submission of respondent Domingo's formal offer of evidence, rendered a Decision dated 24 January 1995 holding that the

contract between petitioner and Elpidio was actually one of equitable mortgage and not a *pacto de retro* sale. According to the trial court –

As regards the first issue raised, Art. 1602, New Civil Code hereinbelow quoted finds significant application.

"Art. [1602]. The contract shall be presumed to be an equitable mortgage, in any of the following case[s]:

(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;

x x x x

(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."

The testimony of petitioner's witness Elpidio R. Dizon readily disclosed that prior to the execution of the Deed of Sale under Pacto de Retro, he had already obtained from Anatalia Ramos the total amount of P350,000.00 evidenced by Promissory Notes and Real Estate Mortgage. It may be fairly inferred therefrom that the real intention of the parties is that the transaction leading to execution of the Deed of Sale under Pacto de Retro shall secure the payment of Elpidio Dizon's indebtedness covered by the Promissory Notes and Real Estate Mortgage executed by in favor of Anatalia Ramos. It is also clearly shown that the price of the sale with right to repurchase is unusually inadequate because the improvements erected on the lot belonging to Domingo Dizon was even offered to the latter for sale by Elpidio Dizon for P550,000.00. Moreover, the possession of the subject property has remained with the representative/agent of the owner Domingo Dizon even long after the right of redemption has expired. Under these circumstances, the court cannot but conclude that the deed in question is in reality a mortgage. With this conclusion, the court, therefore, holds the petition as being improper and is dismissed.^[15]

It was only on 31 January 1995 when respondent Domingo filed his Formal Offer of Exhibits.^[16]

Petitioner thereafter filed a Notice of Appeal^[17] and elevated the case before the Court of Appeals which affirmed the Decision of the trial court in the Decision now assailed before us. The dispositive portion of the Court of Appeals' ruling provides:

WHEREFORE, finding no reversible error in the judgment appealed from, the same is hereby AFFIRMED. With costs against the appellant.^[18]

Petitioner's Motion for Reconsideration was likewise resolved in favor of herein respondents.^[19] Hence, this Petition raising the following issues for our consideration: