

THIRD DIVISION

[G.R. NO. 149756, February 11, 2005]

MYRNA RAMOS, PETITIONER, VS. SUSANA S. SARAO AND JONAS RAMOS, RESPONDENTS.

DECISION

PANGANIBAN, J.:

Although the parties in the instant case denominated their contract as a "*DEED OF SALE UNDER PACTO DE RETRO*," the "sellers" have continued to possess and to reside at the subject house and lot up to the present. This evident factual circumstance was plainly overlooked by the trial and the appellate courts, thereby justifying a review of this case. This overlooked fact clearly shows that the petitioner intended merely to secure a loan, not to sell the property. Thus, the contract should be deemed an equitable mortgage.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the August 31, 2001 Decision^[2] of the Court of Appeals (CA) in CA-GR CV No. 50095, which disposed as follows:

"**WHEREFORE**, the instant appeal is **DISMISSED** for lack of merit. The decision dated January 19, 1995 of the Regional Trial Court, Branch 145, Makati City is **AFFIRMED in toto**."^[3]

The Facts

On February 21, 1991, Spouses Jonas Ramos and Myrna Ramos executed a contract over their conjugal house and lot in favor of Susana S. Sarao for and in consideration of P1,310,430.^[4] Entitled "*DEED OF SALE UNDER PACTO DE RETRO*," the contract, *inter alia*, granted the Ramos spouses the option to repurchase the property within six months from February 21, 1991, for P1,310,430 plus an interest of 4.5 percent a month.^[5] It was further agreed that should the spouses fail to pay the monthly interest or to exercise the right to repurchase within the stipulated period, the conveyance would be deemed an absolute sale.^[6]

On July 30, 1991, Myrna Ramos tendered to Sarao the amount of P1,633,034.20 in the form of two manager's checks, which the latter refused to accept for being allegedly insufficient.^[7] On August 8, 1991, Myrna filed a Complaint for the redemption of the property and moral damages plus attorney's fees.^[8] The suit was docketed as Civil Case No. 91-2188 and raffled to Branch 145 of the Regional Trial Court (RTC) of Makati City. On August 13, 1991, she deposited with the RTC two checks that Sarao refused to accept.^[9]

On December 21, 1991, Sarao filed against the Ramos spouses a Petition "for consolidation of ownership in *pacto de retro* sale" docketed as Civil Case No. 91-3434 and raffled to Branch 61 of the RTC of Makati City.^[10] Civil Case Nos. 91-2188 and 91-3434 were later consolidated and jointly tried before Branch 145 of the said Makati RTC.^[11]

The two lower courts narrated the trial in this manner:

"x x x Myrna [Ramos] testified as follows: On February 21, 1991, she and her husband borrowed from Sarao the amount of P1,234,000.00, payable within six (6) months, with an interest thereon at 4.5% compounded monthly from said date until August 21, 1991, in order for them to pay [the] mortgage on their house. For and in consideration of the said amount, they executed a deed of sale under a [*pacto de retro*] in favor of Sarao over their conjugal house and lot registered under TCT No. 151784 of the Registry of Deeds of Makati (Exhibit A). She further claimed that Sarao will keep the torrens title until the lapse of the 6-month period, in which case she will redeem [the] subject property and the torrens title covering it. When asked why it was the amount of P1,310,430 instead of the aforestated amount which appeared in the deed, she explained that upon signing of the deed in question, the sum of P20,000.00 representing attorney's fees was added, and its total amount was multiplied with 4.5% interest rate, so that they could pay in advance the compounded interest. She also stated that although the market value of the subject property as of February 1991 [was] calculated to [be] more or less P10 million, it was offered [for] only P1,310,430.00 for the reason that they intended nothing but to redeem the same. In May 1991, she wrote a letter to Atty. Mario Aguinaldo requesting him to give a computation of the loan obligation, and [expressed] her intention to redeem the subject property, but she received no reply to her letter. Instead, she, through her husband, secured directly from Sarao a handwritten computation of their loan obligation, the total of which amount[ed] to P1,562,712.14. Later, she sent several letters to Sarao, [furnishing] Atty. Aguinaldo with copies, asking them for the updated computation of their loan obligation as of July 1991, but [no reply was again received]. During the hearing of February 17, 1992, she admitted receiving a letter dated July 23, 1991 from Atty. Aguinaldo which show[ed] the computation of their loan obligation [totaling] to P2,911,579.22 (Exhs. 6, 6-A). On July 30, 1991, she claimed that she offered the redemption price in the form of two (2) manager's checks amounting to P1,633,034.20 (Exhs. H-1 & H-2) to Atty. Aguinaldo, but the latter refused to accept them because they [were] not enough to pay the loan obligation. Having refused acceptance of the said checks covering the redemption price, on August 13, 1991 she came to Court to consign the checks (Exhs. L-4 and L-5). Subsequently, she proceeded to the Register of Deeds to cause the annotation of *lis pendens* on TCT No. 151784 (Exh. B-1-A). Hence, she filed the x x x civil case against Sarao.

"On the other hand, Sarao testified as follows: On February 21, 1991, spouses Ramos together with a certain Linda Tolentino and her husband, Nestor Tolentino approached her and offered transaction involv[ing a]

sale of property[. S]he consulted her lawyer, Atty. Aguinaldo, and on the same date a corresponding deed of sale under *pacto de retro* was executed and signed (Exh. 1). Later on, she sent, through her lawyer, a demand letter dated June 10, 1991 (Exh. 6) in view of Myrna's failure to pay the monthly interest of 4.5% as agreed upon under the deed[. O]n June 14, 1991 Jonas replied to said demand letter (Exh. 8); in the reply Jonas admitted that he no longer ha[d] the capacity to redeem the property and to pay the interest. In view of the said reply of Jonas, [Sarao] filed the corresponding consolidation proceedings. She [further claimed] that before filing said action she incurred expenses including payment of real estate taxes in arrears, x x x transfer tax and capital [gains] tax, and [expenses] for [the] consolidated proceedings, for which these expenses were accordingly receipted (Exhs. 6, 6-1 to 6-0). She also presented a modified computation of the expenses she had incurred in connection with the execution of the subject deed (Exh. 9). She also testified that Myrna did not tender payment of the correct and sufficient price for said real property within the 6-month period as stipulated in the contract, despite her having been shown the computation of the loan obligation, inclusive of capital gains tax, real estate tax, transfer tax and other expenses. She admitted though that Myrna has tendered payment amounting to P1,633,034.20 in the form of two manager's checks, but these were refused acceptance for being insufficient. She also claimed that several letters (Exhs. 2, 4 and 5) were sent to Myrna and her lawyer, informing them of the computation of the loan obligation inclusive of said expenses. Finally, she denied the allegations made in the complaint that she allied herself with Jonas, and claimed that she ha[d] no knowledge about said allegation."^[12]

After trial, the RTC dismissed the Complaint and granted the prayer of Sarao to consolidate the title of the property in her favor.^[13] Aggrieved, Myrna elevated the case to the CA.

Ruling of the Court of Appeals

The appellate court sustained the RTC's finding that the disputed contract was a bonafide *pacto de retro* sale, not a mortgage to secure a loan.^[14] It ruled that Myrna Ramos had failed to exercise the right of repurchase, as the consignment of the two manager's checks was deemed invalid. She allegedly failed (1) to deposit the correct repurchase price and (2) to comply with the required notice of consignment.^[15]

Hence, this Petition.^[16]

The Issues

Petitioner raises the following issues for our consideration:

"1. Whether or not the honorable appellate court erred in ruling the subject Deed of Sale under Pacto de Retro was, and is in reality and under the law an equitable mortgage;

"2. Whether or not the honorable appellate court erred in affirming the ruling of the court a quo that there was no valid tender of payment of the redemption price neither [sic] a valid consignment in the instant case; and

"3. Whether or not [the] honorable appellate court erred in affirming the ruling of the court a quo denying the claim of petitioner for damages and attorney's fees."^[17]

The Court's Ruling

The Petition is meritorious in regard to Issues 1 and 2.

First Issue: **A Pacto de Retro Sale** **or an Equitable Mortgage?**

Respondent Sarao avers that the herein Petition should have been dismissed outright, because petitioner (1) failed to show proof that she had served a copy of it to the Court of Appeals and (2) raised questions of fact that were not proper issues in a petition under Rule 45 of the Rules of Court.^[18] This Court, however, disregarded the first ground; otherwise, substantial injustice would have been inflicted on petitioner. Since the Court of Appeals is not a party here, failure to serve it a copy of the Petition would not violate any right of respondent. Service to the CA is indeed mentioned in the Rules, but only to inform it of the pendency of the appeal before this Court.

As regards Item 2, there are exceptions to the general rule barring a review of questions of fact.^[19] The Court reviewed the factual findings in the present case, because the CA had manifestly overlooked certain relevant and undisputed facts which, after being considered, justified a different conclusion.^[20]

Pacto de Retro Sale Distinguished **from Equitable Mortgage**

The pivotal issue in the instant case is whether the parties intended the contract to be a bona fide *pacto de retro* sale or an equitable mortgage.

In a *pacto de retro*, ownership of the property sold is immediately transferred to the vendee a retro, subject only to the repurchase by the vendor *a retro* within the stipulated period.^[21] The vendor *a retro's* failure to exercise the right of repurchase within the agreed time vests upon the vendee *a retro*, by operation of law, absolute title to the property.^[22] Such title is not impaired even if the vendee *a retro* fails to consolidate title under Article 1607 of the Civil Code.^[23]

On the other hand, an equitable mortgage is a contract that --although lacking the formality, the form or words, or other requisites demanded by a statute -- nevertheless reveals the intention of the parties to burden a piece or pieces of real property as security for a debt.^[24] The essential requisites of such a contract are as follows: (1) the parties enter into what appears to be a contract of sale, but (2)

their intention is to secure an existing debt by way of a mortgage.^[25] 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.^[26]

This Court has consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature.^[27] The decisive factor is their intention -- as shown by their conduct, words, actions and deeds -- prior to, during, and after executing the agreement.^[28] This juristic principle is supported by the following provision of law:

Article 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.^[29]

Even if a contract is denominated as a *pacto de retro*, the owner of the property may still disprove it by means of parol evidence,^[30] provided that the nature of the agreement is placed in issue by the pleadings filed with the trial court.^[31]

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.^[32] However, the law enumerates several instances that show when a contract is presumed to be an equitable mortgage, as follows:

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.^[33]

Furthermore, a contract purporting to be a *pacto de retro* is construed as an equitable mortgage when the terms of the document and the surrounding circumstances so require.^[34] The law discourages the use of a *pacto de retro*,