

SECOND DIVISION

[G.R. No. 128759, August 01, 2002]

RAYMUNDO TOLENTINO AND LORENZA ROÑO, SUBSTITUTED BY THEIR HEIRS, REPRESENTED BY EMMANUELA ROÑO, AS ATTORNEY-IN-FACT, PETITIONERS, VS. COURT OF APPEALS, JOSEFINA F. LETICIA, CRESENTE, ARSENIO, VIOLETA, RAMON, TERESITA, CELIA, YOLANDA, ROLANDO, RESTITUTO AND REDENTOR, ALL SURNAMED DE GUZMAN, GLORIA G. PONGCO AND AMPARO G. BADURIA, RESPONDENTS.

D E C I S I O N

QUISUMBING, J.:

Before us is a petition for review seeking the reversal of the decision^[1] dated December 13, 1996 of the Court of Appeals in CA-G.R. CV No. 21005, which affirmed the decision of the Regional Trial Court of Pasig City, Branch 162. It likewise seeks to annul the resolution denying petitioners' motion for reconsideration.

The facts of this case are as follows:

Spouses Pedro and Josefina de Guzman were the registered owners of a parcel of land covered by Transfer Certificate of Title No. 20248 T-105 of the Register of Deeds of Quezon City. They obtained a loan from the Rehabilitation Finance Corporation (RFC), now Development Bank of the Philippines (DBP), and executed a mortgage as security therefor. They failed to pay the obligation, hence the mortgage was foreclosed.

Before the redemption period expired, the De Guzman spouses obtained another loan for P18,000, this time from petitioners Raymundo Tolentino and Lorenza Roño, to redeem the property. The parties agreed that repayment would be for a period of ten years at P150 a month commencing on February 1963. On December 14, 1962, the loan with RFC was paid and the mortgage was cancelled. Tolentino and Roño, on representation that they needed a security for the loan, requested the De Guzman spouses to sign a Deed of Promise to Sell. On February 1, 1963,^[2] they again asked respondent spouses to sign another document, a Deed of Absolute Sale, on representation that they wanted the latter's children to answer for the loan in the event of their parents' untimely death. Armed with the Deed of Absolute Sale, petitioners secured the cancellation of TCT No. 20248 T-105 and TCT No. 69164 was issued in their name.

On June 9, 1971, Pedro de Guzman died. His widow Josefina and their children tried to settle the remaining balance of the loan. Tolentino and Roño, feigning inability to remember the actual arrangements, agreed to reconvey the property on condition that respondents pay the actual market value obtaining in 1971. Upon verification with the Registry of Deeds of Quezon City, the de Guzmans found that the title was already in the names of Tolentino and Roño. Consequently, the de Guzmans filed a

complaint for declaration of sale as equitable mortgage and reconveyance of property with damages, at the Regional Trial Court of Pasig City.

On March 21, 1988, the court decided in favor of the de Guzmans, disposing thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

(1) Declaring the said transaction between spouses de Guzman and the defendants as a mere equitable mortgage and the corresponding documents as deeds of mortgage securing the loan of P18,000.00.

(2) Ordering the plaintiffs to pay the defendants the unpaid balance of the loan in the amount of P3,750.00 with legal interest until paid in full.

(3) Ordering the defendants to reconvey by appropriate documents the subject property to the plaintiffs.

(4) Ordering the defendants jointly and severally to pay to the plaintiffs the amount of Three Thousand Pesos (P3,000.00) for and as attorney's fees.

Costs against defendants.^[3]

In rendering the foregoing decision, the trial court considered foremost the real parties' intent in entering into the transactions. It observed that the Deed of Promise to Sell, the Deed of Absolute Sale, and the Contract to Sell were related transactions which indicated that petitioners did not intend to hold the property as owner, but as security for the loan extended to respondents. Additionally, the consideration involved in these transactions was P18,000, the amount of the loan, which showed that petitioners did not profit from the said transactions. Further, the trial court found that the de Guzmans remained in possession of the property and continued to pay the real estate taxes even after the execution of the Deed of Absolute Sale. These, according to the trial court, are badges of equitable mortgage. Invoking Articles 1602 and 1604 of the Civil Code,^[4] the trial court ruled that the presence of these elements in the instant case was sufficient to raise the presumption that the contract between the parties was an equitable mortgage.

Petitioners appealed to the Court of Appeals, which sustained the trial court's decision, as follows:

WHEREFORE, premises considered, the appealed decision (dated March 21, 1988) of the Regional Trial Court (Branch 162) in Pasig City in Civil Case No. 40555 is hereby AFFIRMED in toto. With costs against the defendants/appellants.

SO ORDERED.^[5]

Petitioners' motion for reconsideration was denied. Hence, this instant petition, where petitioners aver that the Court of Appeals erred in:

I ...APPLYING THE PROVISIONS OF ART. 1602 OF THE CIVIL CODE TO THE INSTANT CASE.

II ...NOT HOLDING THAT THE ACTION FOR DECLARATION OF NULLITY OF THE DEED OF ABSOLUTE SALE IS NOT THE PROPER REMEDY OR CAUSE OF ACTION.^[6]

On the first assigned error, petitioners argue that Article 1602 of the Civil Code relied upon by the trial court, as well as by the Court of Appeals, in holding that the sale in question is an equitable mortgage, applies only when there is no express agreement or stipulation between the parties. According to petitioners, this is the reason for the use of the word “presumed” or “inferred” in the said article. In the instant case, petitioners allege that the parties expressly agreed on the two conditions that private respondents would remain in possession of the property and that they would also pay the real estate taxes thereon. Article 1602 is clearly inapplicable, according to petitioners.

Anent the second assigned error, petitioners argue that private respondents adopted the wrong remedy in asserting their rights over the subject property. Petitioners insist that instead of an action for reformation of instrument, as provided in Article 1605 of the Civil Code,^[7] respondents erroneously instituted an action for declaration of nullity of the deed of sale and specific performance. Private respondents counter that this is the first time that petitioners are raising this issue. New issues cannot be raised for the first time on appeal. Besides, petitioners’ active participation in the proceedings before the trial court estopped them from questioning the action instituted by private respondents. Further, Article 1605 of the Civil Code does not preclude an aggrieved party from pursuing other remedies to effectively protect his interest and recover his property, according to private respondents.

We find no merit in petitioners’ contentions.

Nothing in Article 1602 of the Civil Code indicates that the provision applies only in the absence of an express agreement between the parties.

Further, we applied Article 1602 in several cases despite the presence of an express or written contract between the parties. In *Lapat vs. Rosario*,^[8] petitioner asked for a consolidation of ownership over two parcels of land by virtue of two Deeds of Sale of Realty with Right to Repurchase allegedly executed by private respondents in petitioner’s favor. Petitioner therein alleged that as respondents failed to repurchase the property on the agreed period, she then became its owner and was therefore entitled to consolidate ownership over it. However, private respondents denied selling the two parcels of land to petitioner. They alleged that petitioner sold to them an Isuzu Elf truck which needed some repairs. As they didn’t have the money for repairs at that time, petitioner loaned to them P60,000 with 4 percent interest. To secure its payment, petitioner required respondents to sign the two Deeds of Sale with Right to Repurchase. In that case, we ruled that the two deeds of sale constituted an equitable mortgage. We applied paragraph 6, Article 1602 of the Civil Code, to wit: *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 contract of sale with right to repurchase was in reality intended to secure the payment of the P60,000 loan.

In *Misena vs. Rongavilla*,^[9] petitioner sold to respondent an undivided one-half portion of lot 315 of the Naic Estate Subdivision in Cavite, evidenced by a Deed of Sale. Later on, respondent obtained a loan from and mortgaged the same property to petitioner. Despite respondent’s failure to settle the loan, petitioner did not

foreclose the mortgage. In 1988, upon petitioner's misrepresentation that the document was intended to foreclose the mortgage and that respondent had one year to redeem the property, petitioner asked respondent to sign a Deed of Absolute Sale conveying the property to petitioner. As respondent refused to vacate the property despite repeated demands, petitioner brought the case to court. We ruled in favor of respondent and held that, applying Article 1602 of the Civil Code, the transaction was an equitable mortgage. The real intention of respondent in signing the document was to provide security for the loan and not to transfer ownership over the property.

Anent the second assigned error, we note that petitioners never raised the propriety of the remedy adopted by private respondents before the lower courts. Well entrenched is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.^[10] Moreover, there is nothing in Article 1605 of the Civil Code that prohibits the institution of an action different from the one provided therein. Said article uses the word "may". It is a settled doctrine in statutory construction that the word "may" denotes discretion, and cannot be construed as having a mandatory effect.^[11] Thus, it is not obligatory for the aggrieved party, under Article 1605 of the Civil Code, to file an action for reformation of instruments. He can avail of another action that he thinks is most appropriate and effective under the circumstances.

WHEREFORE, there being no error committed by the Court of Appeals, the petition is DENIED. The decision of the Court of Appeals dated December 13, 1996, and its resolution dated March 31, 1997, in CA-G.R. CV No. 21005, are AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Corona, JJ., concur.

^[1] Rollo, pp. 21-40.

^[2] February 1, 1963 in CA decision but February 11, 1963 in RTC decision, Petition for Review, Comment, CA Briefs for private respondents Josefina de Guzman and for petitioner Raymundo Tolentino.

^[3] Rollo, pp. 21-22.

^[4] Art. 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 a 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.