

## THIRD DIVISION

**[ G.R. No. 139884, February 15, 2001 ]**

**SPOUSES OCTAVIO AND EPIFANIA LORBES, PETITIONERS, VS.  
COURT OF APPEALS, RICARDO DELOS REYES AND JOSEFINA  
CRUZ, RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

This petition for review on certiorari arose from an action for reformation of instrument and damages originally filed with the Regional Trial Court of Antipolo, Rizal, Branch 74, the decision on which was reviewed and reversed by the Third Division of the Court of Appeals.

Petitioners were the registered owners of a 225-square meter parcel of land located in Antipolo, Rizal covered by Transfer Certificate of Title No. 165009. Sometime in August 1991, petitioners mortgaged this property to Florencio and Nestor Carlos in the amount of P150,000.00.

About a year later, the mortgage obligation had increased to P500,000.00 and fearing foreclosure of the property, petitioners asked their son-in-law, herein private respondent Ricardo delos Reyes, for help in redeeming their property. Private respondent delos Reyes agreed to redeem the property but because he allegedly had no money then for the purpose he solicited the assistance of private respondent Josefina Cruz, a family friend of the delos Reyeses and an employee of the Land Bank of the Philippines.

It was agreed that petitioners will sign a deed of sale conveying the mortgaged property in favor of private respondent Cruz and thereafter, Cruz will apply for a housing loan with Land Bank, using the subject property as collateral. It was further agreed that out of the proceeds of the loan, P500,000.00 will be paid to the Carloses as mortgagees, and any such balance will be applied by petitioners for capital gains tax, expenses for the cancellation of the mortgage to the Carloses, transfer of title to Josefina Cruz, and registration of a mortgage in favor of Land Bank.<sup>[1]</sup> Moreover, the monthly amortization on the housing loan which was supposed to be deducted from the salary of private respondent Cruz will be reimbursed by private respondent delos Reyes.

On September 29, 1992, the Land Bank issued a letter of guarantee in favor of the Carloses, informing them that Cruz's loan had been approved. On October 22, 1992, Transfer Certificate of Title No. 165009 was cancelled and Transfer Certificate of Title No. 229891 in the name of Josefina Cruz was issued in lieu thereof.<sup>[2]</sup> On November 25, 1992, the mortgage was discharged.

Sometime in 1993, petitioners notified private respondent delos Reyes that they

were ready to redeem the property but the offer was refused. Aggrieved, petitioners filed on July 22, 1994 a complaint for reformation of instrument and damages with the RTC of Antipolo, Rizal, docketed as Civil Case No. 94-3296.

In the complaint, petitioners claimed that the deed was merely a formality to meet the requirements of the bank for the housing loan, and that the real intention of the parties in securing the loan was to apply the proceeds thereof for the payment of the mortgage obligation.<sup>[3]</sup> They alleged that the deed of sale did not reflect the true intention of the parties, and that the transaction was not an absolute sale but an equitable mortgage, considering that the price of the sale was inadequate considering the market value of the subject property and because they continued paying the real estate taxes thereto even after the execution of the said deed of sale. Petitioners averred that they did not see any reason why private respondents would retract from their original agreement other than that they (petitioners) and the members of their family resigned en masse from the Mahal Namin Organization, of which private respondent delos Reyes was the president and chairman of the board of directors, and private respondent Cruz was the treasurer. In the same complaint, they demanded moral damages, exemplary damages, and attorney's fees.

On July 29, 1996, the trial court issued a temporary restraining order enjoining private respondents from ejecting petitioners from the premises of the disputed property; this was soon replaced by a writ of preliminary injunction.

Summons and a copy of the complaint were served upon private respondents on August 1, 1994. Private respondents filed their answer beyond the reglamentary period, or only on September 1, 1994. Thus, on September 5, 1994, petitioners filed a motion to declare private respondents in default, which the trial court granted in an order dated September 16, 1994. On September 30 of the same year, petitioners presented their evidence *ex parte* before the trial court. The principal witness presented was petitioner Octavio Lorbes, whose testimony was corroborated by his son, Atty. Salvador Lorbes.

On October 12, 1994, private respondents filed a motion to lift order of default and to strike out evidence presented *ex parte*, which the court denied in an order dated October 26, 1994.

On June 20, 1995, the trial court rendered judgment in favor of petitioners, upon finding that: (1) the Deed of Absolute Sale dated October 21, 1992 did not reflect the true intention of the parties, and (2) the transaction entered into between petitioners and Cruz was not an absolute sale but an equitable mortgage, considering that the price stated in the Deed of Absolute Sale was insufficient compared to the value of the property, petitioners are still in possession of the property, and petitioners had continued to pay the real estate taxes thereon after the execution of the said deed of sale. As explained by the trial court in its decision:

The foregoing uncontroverted facts clearly show that the transaction entered into between the plaintiffs and the defendants is not an absolute sale but merely an equitable mortgage as the sale was executed in order to secure a loan from a certain bank to save the property from the danger of foreclosure and to use it as collateral thereof for bank loan purposes and that the same does not reflect the real intention of the

parties in executing the said Deed of Sale. The court notes that at the time the transaction and the Deed of Absolute Sale was executed by the plaintiffs sometime in 1992, the prevailing market value of the lot alone was P400,000.00 per square meter such that the lot alone consisting of 255 square meters, excluding the house and improvements thereon would already cost more than a million pesos already hence, the consideration of P600,000.00 in the said Deed of Sale is considerably insufficient compared to the value of the property. Further, the plaintiffs are still in possession of the subject property and had been paying the realty taxes thereon even after the execution of the sale and the transfer of the title from the plaintiffs to defendant Josephine Cruz which clearly evinces the true badge of the transaction which occurred between the plaintiffs and defendants as that of an equitable mortgage and not an absolute sale and that the plaintiffs were only compelled to enter into the said transaction of sale with the defendants as the former were in extreme need of money in order to redeem their only conjugal property and to save it from being foreclosed for non-payment of the mortgage obligation and that it was never the intention of the plaintiffs to sell the property to the defendants, as it was their agreement that plaintiffs can redeem the property or any member of the family thereof, when they become financially stable.<sup>[4]</sup>

The dispositive portion of the trial court's decision thus provides:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the latter jointly and severally, as follows:

1. To reconvey the subject property to the plaintiffs upon payment of the price stipulated in the contract of sale;
2. To pay plaintiffs the sum of P50,000.00 as moral damages;
3. To pay plaintiffs the sum of P50,000.00 as and by way of attorney's fees plus P1,000.00 per court appearance;
4. To pay the costs of suit.

SO ORDERED.<sup>[5]</sup>

The Court of Appeals reversed the above decision, finding that private respondents were denied due process by the refusal of the trial court to lift the order of default against them, and that the transaction between petitioners and Cruz was one of absolute sale, not of equitable mortgage. It also held the RTC decision to be constitutionally infirm for its failure to clearly and distinctly state the facts and the law on which it is based.

The Court of Appeals held that the reformation of the Deed of Absolute Sale in the instant case is improper because there is no showing that such instrument failed to express the true intention of the parties by reason of mistake, fraud, inequitable conduct, or accident in the execution thereof.<sup>[6]</sup> To the Court of Appeals, the transaction was unmistakably a contract of sale, as evidenced by the numerous supporting documents thereto, such as the Contract to Sell dated June 1992, Affidavit of Waiver/Assignment dated August 14, 1992, Receipt of Partial Advance Payment dated September 9, 1992, and Transfer Certificate of Title No. 229891 issued in the name of private respondent Cruz. Going over the indicators giving rise

to a presumption of equitable mortgage cited in the decision of the RTC, the Court of Appeals held: (1) inadequacy of price is material only in a sale with right to repurchase, which is not the case with herein petitioners and Cruz; moreover, the estimate of the market value of the property came only from the bare testimony of petitioner Octavio Lorbes, (2) petitioners' remaining in possession of the property resulted only from their refusal to vacate the same despite the lawful demands of private respondent Cruz, and (3) there was no documentary evidence that petitioners continued paying the taxes on the disputed property after the execution of the Deed of Absolute Sale.

In its decision, the Court of Appeals also pointed out that under the usual arrangement of *pacto de retro* the vendor of the property is a debtor of the vendee, and the property is used as security for his obligation. In the instant case, the mortgage creditors (the Carloses) are third persons to the Deed of Absolute Sale.

This petition raises three issues before the Court: (1) whether respondent court erred in ruling that the Deed of Absolute Sale dated October 21, 1992 was an equitable mortgage, (2) whether respondent court erred in ruling that by declaring private respondents in default they were denied due process of law, and (3) whether respondent court erred in ruling that the trial court's decision violates the constitutional requirement that it should clearly and distinctly state the facts and the law on which it is based.<sup>[7]</sup>

We shall first deal with the second and third issues, these being preliminary matters.

Well-settled is the rule that courts should be liberal in setting aside orders of default for judgments of default are frowned upon, unless in cases where it clearly appears that the reopening of the case is intended for delay.<sup>[8]</sup> The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.<sup>[9]</sup>

Under the factual milieu of this case, the RTC was indeed remiss in denying private respondents' motion to lift the order of default and to strike out the evidence presented by petitioners *ex parte*, especially considering that an answer was filed, though out of time. We thus sustain the holding of the Court of Appeals that the default order of the RTC was immoderate and in violation of private respondents' due process rights. However, we do not think that the violation was of a degree as to justify a remand of the proceedings to the trial court, first, because such relief was not prayed for by private respondents, and second, because the affirmative defenses and evidence that private respondents would have presented before the RTC were capably ventilated before respondent court, and were taken into account by the latter in reviewing the correctness of the evaluation of petitioners' evidence by the RTC and ultimately, in reversing the decision of the RTC. This is evident from the discussions in the decision of the Court of Appeals, which cited with approval a number of private respondents' arguments and evidence, including the documents annexed to their opposition to the issuance of a writ of preliminary injunction filed with the RTC.<sup>[10]</sup> To emphasize, the reversal of respondent court was not simply on due process grounds but on the merits, going into the issue of whether the transaction was one of equitable mortgage or of sale, and so we find that we can properly take cognizance of the substantive issue in this case, while of course