

TWENTIETH DIVISION

[CA-G.R. CV NO. 02712, March 28, 2014]

EDITHA A. AUTICIO, PETITIONER-APPELLEE, VS. HERMANA DALA-APELADO, RESPONDENT-APPELLANT.

D E C I S I O N

LAGURA-YAP, J.:

Before Us in an Appeal^[1] from the July 21, 2008 Decision^[2] of the Regional Trial Court(RTC), Branch 1 of Borongan City, Eastern Samar in Civil Case No. 3734 with a dispositive reading as follows:

"WHEREFORE and in view of all the foregoing considerations, judgment is hereby rendered in favor of herein (petitioner-appellee) declaring the subject contract to be a true sale with right to repurchase or a Deed of Sale with Pacto de Retro. However, the matter of the real nature of the contract having been submitted for judicial resolution, and 4finding a doubt as to the real intention of the parties in executing the contract the application of the rule provided for under the third (3rd) paragraph of Article 1606 of the Civil Code having been meet and proper the herein vendor a retro, Hermana Dala Apelado, is hereby allowed to repurchase the property sold within 30 days in accordance with the above-stated Par. 3, Article 1606 of the Civil Code of the Philippines, in the amount of P16,8000 plus the sum of P114,000.00 as interest of the P12,000 for ninety four (94) months starting from September 11, 2001 to July 2008, or a total amount of One Hundred Thirty Thousand Eight Hundred (130,800.00) Pesos.

Further should respondent fails to repurchase the land within the above stated period, the petitioner should become the absolute owner of the land in question and her absolute ownership thereof is considered consolidated.

No attorney's fees, litigation expenses and cost, there being no legal basis for the award of the same.

SO ORDERED."

The appeal prays that We set aside the assailed decision and enter another one declaring the contract between the parties as one of equitable mortgage and the interest of 10% null and void.

THE ANTECEDENTS

The instant appeal was commenced by a verified Petition for Consolidation of

Ownership^[3] under Article 1607 of the Civil Code, with Preliminary Injunction and Temporary Restraining Order filed by herein petitioner-appellee Editha A. Auticio against herein respondent-appellant Herman Dala Apelado. The petition alleged as follows:

1. (Petitioner-appellee) is of legal age and resident of Bgry, B. Baybay, Borongan, Eastern Samar, while (respondent-appellant) is likewise of legal age, and resident of Brgy. Lalawigan, Borongan, Eastern Samar, where summons may be served; Both parties have the capacity to sue and be sued;
2. On May 30, 2001, a Deed of Sale with Pacto de Retro⁴ was executed by (respondent-appellant) in favor of (petitioner-appellee) for the price of P16000 covering certain real property described in Tax Declaration No. 99-04019-00907 in the name of Hermana Dala of the Municipal Assessor of Borongan, Eastern Samar xxx
3. As clearly stipulated in the said deed, the period within which the right to redeem may be exercised was to expire in (1) or until February 12, 2002.
4. Notwithstanding the expiration of said period which period has never been extended, said (respondent-appellant) by themselves or any other person who may legally represent them has not exercised such right to redeem or repurchase the property sold;
5. Consequently, there has been consolidated in the (petitioner-appellee) herein the absolute ownership of the property by operation of law;
6. However (respondent-appellant), in bad faith is currently surreptitiously selling and encumbering or transferring title to the property or threatening to do so in favor of third parties at (petitioner-appellee's) expenses and to her damage and prejudice. Further, apparently to frustrate her efforts at consolidation.

xxx

(Petitioner-appellant) thus prays that an order be issued by this Court declaring her as the absolute owner of the real property of the sale with pacto de retro, and directing the Register of Deeds of Borongan, Eastern Samar to make the necessary note of consolidation of ownership, the Municipal Assessor to cancel the Tax Declaration No. 99-04019-00907, in the name of (respondent-appellee) Hermana Dala and issue in lieu thereof a new one in accordance with law in the name of Editha A. Auticio.

The Answer^[5] of respondent-appellant on the other hand, averred that:

1. She admits the allegations contained in paragraph 1 of the petition;
2. She denies specifically the allegations contained in paragraphs 2,3,4 and 5 of the petition, the truth is that the alleged Deed of Sale with Pacto

de Retro did not express the true agreement of the parties, a loan on security was really intended, the real transaction between the parties was a borrowing and lending since the actual agreement of the parties is loan in the amount of P12,000 plus P4,800 as interest, secured by a real mortgage;

xxx

4. The Deed of Sale with Pacto de Retro did not express the true and correct intention of the parties since (respondent-appellant) has only submitted to the dictation of the (petitioner-appellee) to execute the deed under the pressure of his want for immediate money, the agreement of the parties was one of loan with mortgage of real property, the loan was P12,000 but made to appear as P16,800.00 in the contract, the P4,800.00 constitutes as the interest;

5. (Respondent-appellant) had already paid the interest of P4,800.00 in the second week of September 2001, then she was extended another loan in the amount of P7,000.00 sometime in January 2002 with the same property as security;

6. (Respondent-appellant) is willing to deliver to, and deposit with the Honorable Court the amount of P19,000.00 representing payment to (petitioner-appellee) the amount loaned since the interest thereon was already paid, considering that (petitioner-appellee) refused to accept the same;

7. The price in the Deed of Sale with Pacto de Retro is grossly very much less than the market value of the property;

8. (Respondent-appellant) is actually still in possession of the real property subject of the deed;

9. (Petitioner-appellee) is not entitled to damages since the contract is usurious;

xxx

Respondent-appellee thus prays that judgment be rendered dismissing the case for lack of merit, declaring null and void the Deed of Sale under Pacto de retro executed on May 11, 2001, (and) instead (declaring) the transaction between the parties as Equitable Mortgage; ordering petitioner to cease and desist from performing any acts upon the real property mortgage to the petitioner; ordering the petitioner to accept the sum of 19,000 as payment of the amount loaned; ordering petitioner to pay respondent 20, 000 as moral damages, 10000 as attorney's fees plus 1,000 per court appearance.

During trial, petitioner presented herself as her lone witness. She testified on the Deed of Sale Under Pacto De Retro^[6] that was executed in her favor by respondent-appellant on May 11, 2001 involving a certain parcel of land covered by Tax Declaration No. 99-04019-00907^[7]. She identified the signatures on the deed

including that of respondent-appellant and that of witnesses Raquel Caspe, Clarissa Beatriz Ty and one whose name cannot be read. She likewise identified the signature of Atty. Renaldo Alconaba, the Notary Public. She testified further that the period to redeem the property was four months (not one year as averred in the petition) from the date of the document but respondent did not make any effort to redeem the property within the four month period; and that after she filed the instant case respondent-appellant intimated to her that she wants to redeem the property but she did not accept the offer anymore.

On the other hand, respondent-appellant also appeared for herself and testified that:

"she knows the petitioner-appellee in this case who lends money; that on May 11, 2001 she went to Mrs. Auticio to borrow money, but she was told that she can borrow money if she can give a collateral; that she produced a tax declaration of her lot which is not stated in the deed of sale under pacto de retro; that after which she went to Atty. Alconaba for the preparation of the document; that the loan she obtained from Mrs. Auticio was in the amount of P12,000; that the amount of P16,800.00 as appearing in the document of sale under pacto de retro includes the interest of 10% for six (6) months; that she is engage(d) in a buy and sell of fruits as her livelihood and sometime a land broker on selling lot; that she was engage(d) in brokering of selling lots since the year 2000; that as a broker of land for sale the market value of lands (in) Cabong, Eastern Samar, is about 1,500 per square meters(sic) sometime in the year 2000, that the land in question is more or less 700 square meters; that since the time of the filing of the instant case she was in possession of the land in question, but from the year 2004, the land is in possession of Mrs. Auticio up to the present; that the document was explained to her as a collateral only; that the period to redeem was within four (4) months only, and in the fourth month and three days she went to petitioner for the purpose of paying the interest but petitioner refused telling her that what is written in the document should be followed."

Respondent-appellant however did not offer any documentary evidence but submitted a manifestation that the case be submitted for resolution on the basis of her testimony and her witnesses.

On July 21, 2008, the court *a quo* rendered the assailed decision in favor of petitioner-appellee. The trial court in its disquisition made the following conclusions that:

- 1) The absolute ownership of the land in question can now be consolidated with the petitioner-appellee on the ground that the vendor a retro (respondent-appellant) has failed to repurchase the land within the agreed period.
- 2) The petitioner-appellee is entitled to the possession of the property even during the pendency of the case, for as held in pacto de retro sale jurisprudence, *"the title and ownership of the property sold are immediately vested in the vendee a retro, subject to the resolutive condition of repurchase by the vendor a retro within the stipulated period, unless otherwise agreed upon"*.