

THIRD DIVISION

[G.R. NO. 142944, April 15, 2005]

**EDENBERT MADRIGAL AND VIRGILIO MALLARI, PETITIONERS,
VS. THE COURT OF APPEALS AND JOSE MALLARI, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Under consideration is this appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals in **CA-G.R. CV No. 45488**, to wit:

1. **Decision dated 15 October 1999**,^[1] affirming an earlier decision of the Regional Trial Court at Olongapo City in a suit for annulment, redemption and damages with prayer for preliminary injunction and/or temporary restraining order, thereat commenced by the herein private respondent against the petitioners; and
2. **Resolution dated 10 April 2000**,^[2] denying petitioners' motion for reconsideration.

The case is cast against the following factual backdrop:

Private respondent **Jose Mallari** and his wife Fermina Mallari are the owners of a 340-square meter residential lot with a 2-storey residential house erected thereon, situated at Olongapo City. The couple had ten (10) children, five (5) of whom are staying with them in the same house while the other five (5) are either residing abroad or elsewhere in the Philippines.

In need of money for his wife's planned travel to the United States, **Jose** thought of mortgaging the above property with a bank. However, his son **Virgilio Mallari** who is residing with his own family somewhere in San Ildefonso, Bulacan convinced Jose not to proceed with the intended mortgage and to instead assign to him a portion of the same property, assuring his father that the latter could continue in occupancy of the property and that he will allow his sister Elizabeth who operates a store thereat to continue with the same. Virgilio told his father, however, that he will occupy one of the rooms in the house in case he goes to Olongapo City on vacation and that he will renovate the other room and reserve it for his mother when she comes back from the States. Virgilio assured his father that he will not dispose of the property without his father's consent and that the latter could redeem the said property any time he acquires money.

And so, finding no reason to doubt Virgilio's words, Jose did not anymore proceed with his original idea of mortgaging the property with a bank. Instead, on 22 October 1987, he and his wife Fermina executed a document denominated as "**Deed**

of Absolute Sale", whereunder the couple appeared to have conveyed to their son Virgilio Mallari the house and lot in question for a consideration of P50,000.00 although the property easily commands much more at that time. Worse, the deed of conveyance described the properties sold as a one-storey residential house and the 135-square meter lot whereon it stands even as the subject properties actually consist of a 2-storey residential house sitting on a 340-square meter parcel of land.

Things turned for the worse to the unsuspecting Jose Mallari when, without his knowledge, his son Virgilio, via a document bearing date 25 June 1988 and entitled "**Kasulatan ng Bilihang Tuluyan**", sold the same property for the same amount of P50,000.00 to **Edenbert Madrigal**, a longtime neighbor of the Mallaris in the area.

True enough, sometime thereafter, to Jose's great shock, he was demanded by Edenbert Madrigal to vacate the subject property. It was then that Jose came to know for the first time of the sale of his property by his son Virgilio in favor of Edenbert Madrigal thru the aforementioned June 25, 1988 "**Kasulatan ng Bilihang Tuluyan**".

It was against the foregoing backdrop of events when, on 7 September 1988, in the Regional Trial Court at Olongapo City, Jose Mallari filed against his son Virgilio Mallari and Edenbert Madrigal the complaint for annulment, redemption and damages with prayer for preliminary injunction/temporary restraining order in this case. In his complaint, docketed in the same court as Civil Case No. 481-0-88 and raffled to Branch 72 thereof, plaintiff Jose Mallari prayed that the Deed of Absolute Sale executed by him and his wife Fermina on 22 October 1987 in favor of their son Virgilio Mallari be declared null and void, or, in the alternative, that he be allowed to redeem the subject property at a reasonable price. He likewise prayed the court for a writ of preliminary injunction and/or to issue ex parte a temporary restraining order enjoining defendants Virgilio Mallari and Edenbert Madrigal from entering, demolishing or introducing improvements on the subject properties, plus an award of actual and moral damages and attorney's fees.

After due proceedings, the trial court, in a **decision dated 29 September 1993**,^[3] rendered judgment for plaintiff Jose Mallari by ordering defendant Edenbert Madrigal to allow the former to redeem the subject property based on the same amount it was sold to him by his co-defendant Virgilio Mallari, and for the two (2) defendants jointly and severally to pay plaintiff Jose Mallari moral and exemplary damages, attorney's fees and the cost of suit. More specifically, the trial court's decision dispositively reads:

"PREMISES CONSIDERED, this Court finds and so holds that since plaintiff has sufficiently established preponderance of evidence against the defendants, judgment is hereby rendered ordering defendant Edenbert Madrigal to allow plaintiff to redeem the subject property based on the consideration of sale marked as Exhibit 'B'; and for defendants jointly and severally to pay plaintiff (1) moral damages in the sum of P15,000.00; (2) exemplary damages of P5,000.00; (3) P10,000.00 as attorney's fees; and (4) to pay the cost of suit.

All claims of defendants are denied for lack of merit.

SO ORDERED."

Obviously dissatisfied, both defendants went on appeal to the Court of Appeals whereat their recourse was docketed as **CA-G.R. CV No. 45488**.

As stated at threshold hereof, the Court of Appeals, in a **decision dated 15 October 1999**,^[4] affirmed *en toto* the appealed decision of the trial court, thus:

WHEREFORE, finding that the lower court did not err in issuing the assailed Decision, this Court hereby **AFFIRMS** the same in its entirety.

SO ORDERED.

In time, appellants Virgilio Mallari and Edenbert Madrigal moved for a reconsideration but their motion was denied by the appellate court in its **Resolution of 10 April 2000**.^[5]

Hence, their present recourse, submitting for our consideration the following issues:

"I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE QUESTIONED DEED OF SALE IS A MORTGAGE

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT RULING THAT PETITIONER EDENBERT MADRIGAL WAS A BUYER ON (sic) GOOD FAITH

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION AWARDING MORAL, EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PRIVATE RESPONDENT"

We **DENY**.

Petitioners fault the two (2) courts below for construing the **Deed of Absolute Sale** executed by private respondent Jose Mallari and his wife Fermina Mallari in favor of their son Virgilio Mallari as an equitable mortgage and not as an outright sale as the document itself proclaims.

We rule and so hold that both courts correctly construed the aforementioned Deed of Absolute Sale as an equitable mortgage and not a sale, as it purports to be. As aptly pointed out by the Court of Appeals in its assailed decision of 15 October 1999, to which we are in full accord:

"xxx. Evidence clearly shows that there was indeed no intent to sell the subject property. Rather, what transpired between the parties, who were father and son, was only a mortgage involving P50,000.00 over a portion of a lot with a house in Olongapo City. Circumstances surrounding the transaction between [respondent Jose Mallari] and [petitioner] Virgilio Mallari pointed only to one thing, that [respondent Jose Mallari] was in need of money to finance the US trip of his wife and he planned to mortgage the subject property with a bank but he was prevailed by his