

## THIRD DIVISION

[ G.R. No. 152695, July 25, 2011 ]

**VICTORIA CLARAVALL, ASSISTED BY HER HUSBAND, LORETO CLARAVALL, PETITIONER, VS. RICARDO LIM, ROBERTO LIM, AND ROGELIO LIM, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court which seeks to set aside the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated March 18, 2002 in CA-G.R. CV No. 38859. The assailed CA Decision affirmed the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Isabela, Branch 17, in Civil Case No. 2583.

The instant petition arose from a Complaint for Consolidation of Ownership of Real Properties filed by herein respondents against herein petitioner, alleging as follows:

x x x x

3. That sometime on December 3, 1976, the defendant, with the marital consent of her husband, executed a DEED OF SALE WITH THE RIGHT OF REPURCHASE SELLING AND CONVEYING unto the plaintiffs the following described properties, to wit:

A COMMERCIAL LOT located in the Centro of Ilagan, Isabela x  
x x.

A DWELING HOUSE with a ground area of 108 square meters,  
more or less, constructed with wooden materials and with G.I.  
roofing, erected on the above-described commercial lot x x x.

4. That the consideration of the sale is TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00), Philippine Currency paid by the plaintiffs to the defendant;

5. That the condition of said sale is that the defendant reserved the right to repurchase, within two (2) years from said date, said commercial lot and dwelling house by paying and returning unto the plaintiffs the purchase [price] of P250,000.00 stipulated in the Deed, a copy of which is hereto attached and made part hereof marked Annex "A"; that within [six] (6) months before the expiration of the date of repurchase, the defendant is under obligation to give plaintiffs written notice that she is

in a position to repurchase said properties before the expiration of said period; and for failure to give such notice, the plaintiffs who are *vendees-a-retro* shall automatically become the absolute owners thereof upon the expiration of said period;

6. That defendant never gave written notice to plaintiffs that she was in a position to repurchase said commercial lot and dwelling house as described above; neither did defendant offer to repurchase the same upon the expiration of said period; and that after notifying the defendant that she may still repurchase said properties three months after the expiration of said period, she failed to repurchase the same;

7. That considering that the dwelling house is already an old house and has depreciated a lot, the purchase price of the building and house indicated in the deed justly represents the fair market value of said properties;

8. That considering that the defendant failed to repurchase the dwelling house and commercial lot described in paragraph 3 hereof on or before December 3, 1976, the plaintiffs are now entitled to the consolidation of their ownership of the same.

x x x x<sup>[3]</sup>

In her Answer with Counterclaim, petitioner denied the material allegations of the Complaint and raised the following Special and Affirmative Defenses:

1 - That on December 3, 1976, the plaintiffs and the defendant entered into a contract of sale with right of repurchase over the properties mentioned and described in the deed x x x for a consideration and/or price of Two Hundred Fifty Thousand Pesos (P250,000.00), x x x;

2 - That after the plaintiffs have paid to the defendant One Hundred Fifty Thousand Pesos (P150,000.00), out of the stipulated consideration and/or price of Two Hundred Fifty Thousand Pesos (P250,000.00), the former demanded and/or required upon the latter as additional obligation to require her brother-in-law, Francisco alias Enrique alias Igme Claravall from whom the dwelling house was bought by her in 1967, to execute another deed of sale over the same dwelling house in their (plaintiffs') favor, with right of repurchase of the former;

3 - That upon the failure and/or refusal of the defendant to comply with the additional obligation imposed upon her by the plaintiffs mentioned in the next preceding paragraph, the latter also refused and/or failed to pay their balance of One Hundred Thousand Pesos (P100,000.00), to the former, although said plaintiffs, on the occasions of their refusal to pay said balance, promised to the defendant that should she win her case then pending before the Court of Appeals, involving another bigger residential lot, with a very much bigger and concrete house thereon, also situated in Centro, Ilagan, Isabela, the former shall be ready and willing

to cancel the said contract of sale with right of repurchase and instead and/or in lieu thereof, to execute with the latter, another contract of sale with right of repurchase over said bigger residential lot with a bigger and concrete dwelling house thereon, for a consideration and/or price of Five Hundred Thousand Pesos (P500,000.00), in addition to the One Hundred Fifty Thousand Pesos (P150,000.00) already paid by them under the deed, x x x and for a longer period of five (5) years within which to repurchase;

4 - That when the defendant refused to agree to the promise and/or proposal of the plaintiffs mentioned in the next preceding paragraph, the latter insisted on their refusal to pay their balance of One Hundred Thousand Pesos (P100,000.00) x x x;

5 - That by reason of the refusal of the plaintiffs to pay to the defendant their balance of One Hundred Thousand Pesos (P100,000.00), and/or for having retained the same for themselves, the latter, on December 1, 1978, executed a "Cautionary Notice", addressed to the Register of Deeds and Provincial Assessor of Isabela, registering and/or manifesting her opposition to any consolidation of ownership which may be made by the plaintiffs in connection with the Deed of Sale with Right of Repurchase x x x;

6 - That considering the fact that the plaintiffs, as vendees, retained for themselves One Hundred Thousand Pesos (P100,000.00), which is a part of the consideration and/or price of the contract of sale with right of repurchase and that the defendant, as vendor, retained possession of the properties sold, the document executed by and between the parties plaintiffs and defendant on December 3, 1976, x x x, is consequently presumed to be a mere equitable mortgage;

x x x x.<sup>[4]</sup>

After the issues were joined, trial on the merits ensued.

On August 5, 1991, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiffs and against the defendant:

1. Declaring the plaintiffs to be the absolute owners of the commercial lot and dwelling house described in par. 3 of the Complaint;
2. Declaring the defendant to have waived her right to repurchase said properties;
3. Ordering the defendant to pay attorney's fees of P2,000.00;  
and

4. Ordering the defendant to pay costs of this suit.

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

Aggrieved by the judgment of the RTC, petitioner filed an appeal with the CA.

On March 18, 2002, the CA promulgated the presently assailed Decision affirming the judgment of the RTC.

Hence, the instant petition with the following assignment of errors:

A. THE RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE POSSESSION OF THE PROPERTY SUBJECT OF THE DEED OF SALE WITH RIGHT TO REPURCHASE, REMAINED WITH PETITIONER VICTORIA CLARAVALL, AS LESSOR, TO ENRIQUE CLARAVALL, AS LESSEE;

B. THE RESPONDENT COURT GRAVELY ERRED IN NOT FINDING THAT BY CLEAR INFERENCE RESPONDENTS EXTENDED THE PERIOD OF PETITIONER VICTORIA H. CLARAVALL TO EXERCISE HER RIGHT TO REPURCHASE THE PROPERTY WHICH IS THE SUBJECT OF THE DEED OF SALE WITH RIGHT TO REPURCHASE (EXHIBIT A);

C. THE RESPONDENT COURT GRAVELY ERRED IN NOT FINDING THAT BY THE UNASSAILABLE RECEIPTS, RESPONDENTS PAID ONLY ONE HUNDRED [FIFTY] THOUSAND (P150,000.00) PESOS AND REFUSED TO PAY THE BALANCE OF ONE HUNDRED THOUSAND PESOS;

D. THE RESPONDENT COURT SERIOUSLY ERRED IN NOT FINDING THAT THE DEED OF SALE WITH RIGHT TO REPURCHASE (EXH. A) IS AN EQUITABLE MORTGAGE; AND

E. EVEN ASSUMING THAT EXHIBIT A IS A *BONA FIDE* DEED OF SALE WITH RIGHT TO REPURCHASE, THE RESPONDENT COURT SERIOUSLY ERRED IN NOT GRANTING PETITIONER VICTORIA CLARAVALL'S RIGHT TO EXERCISE HER RIGHT TO REPURCHASE WITHIN THIRTY (30) DAYS FROM THE TIME OF FINAL JUDGMENT PURSUANT TO ARTICLE 1606 OF THE CIVIL CODE.<sup>[6]</sup>

At the outset, it bears to reiterate the well-settled rule that, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised by the parties and passed upon by this Court.<sup>[7]</sup> This restriction of the review to questions of law has been institutionalized in Section 1, Rule 45 of the Rules of Court, the second sentence of which provides that the petition shall raise only questions of law which must be distinctly set forth. Indeed, in the exercise of its power of review, the Court is *not* a trier of facts and, subject to certain exceptions,<sup>[8]</sup> which the Court finds to be absent in the instant case, it does not normally undertake the re-examination of the evidence presented by the contending parties during the trial.<sup>[9]</sup> Perforce, the findings of fact by the CA, affirming that of the RTC,

are conclusive and binding on the Court.<sup>[10]</sup> In the instant case, a perusal of petitioner's first four assigned errors would readily show that the issues raised are factual in nature; thus, necessitating a review of the evidence presented by the parties. Without doubt, the following questions raised in the instant petition, to wit: (1) whether the property subject of the instant case is in the possession of petitioner; (2) whether petitioner's right to repurchase is extended; (3) whether respondents were only able to pay a portion of the purchase price for the subject property, and (4) whether the subject deed of sale with right of repurchase is actually an equitable mortgage, are all questions of fact which are beyond the province of a petition for review on *certiorari*.

Even granting, *arguendo*, that the foregoing issues of fact can be validly raised in the instant petition, the Court still finds petitioner's arguments to be without merit.

Echoing her arguments raised before the CA, petitioner's bone of contention in the present petition is that the contract she entered into with respondents is an equitable mortgage, claiming that: (1) she remained in possession of the subject property; (2) her right to repurchase has not yet expired; and (3) respondents retained a portion of the purchase price. Petitioner argues that, under Article 1602 of the Civil Code,<sup>[11]</sup> these circumstances indicate that her contract with respondents is an equitable mortgage. However, the Court finds no cogent reason to depart from the findings of both the CA and the RTC that petitioner failed to substantiate her claims and that the subject contract is, in fact, one of sale with right of repurchase.

The CA correctly held as follows:

The person in actual possession of the property at the time of the execution of the deed of sale with right to repurchase was Enrique Claravall, a lessee of the dwelling unit located on the commercial lot. In the case of *Ignacio vs. CA*, the Supreme Court held the transaction between the petitioner and respondent to be a sale with a right to repurchase observing that "private respondents have not been in actual possession of the subject property. They had been leasing it out at the time the deed was executed." x x x

x x x x

The fact that plaintiff instituted the action for consolidation of ownership five months after December 3, 1978, the expiry date of the right to repurchase, should not be construed as an extension of the period for defendant to exercise her right to repurchase the subject property. Any extension for the exercise of the right to repurchase must be expressly provided in another document to give rise to the presumption of equitable mortgage, and not merely implied from any act or omission.<sup>[12]</sup>

The Court likewise quotes, with approval, the disquisition of the RTC disposing of the issue on respondents' supposed failure to pay the full amount of the purchase price, thus: