

FIRST DIVISION

[G.R. NO. 162112, July 03, 2007]

**DOMINGO R. LUMAYAG AND FELIPA N. LUMAYAG, PETITIONERS,
VS. HEIRS OF JACINTO NEMEÑO AND DALMACIA DAYANGCO-
NEMEÑO, REPRESENTED BY MELITON NEMEÑO, RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

Challenged and sought to be set aside in this petition for review on certiorari under Rule 45 of the Rules of Court is the decision^[1] dated September 30, 2003 of the Court of Appeals (CA), as reiterated in its resolution^[2] of January 9, 2004 in CA-G.R. CV No. 63230, affirming, with modification, an earlier decision of the Regional Trial Court (RTC) of Ozamiz City which ruled that the instrument entitled *Deed of Sale with Pacto De Retro* executed in favor of the herein petitioners by the respondents is actually an equitable mortgage.

The facts:

During their lifetime, the spouses Jacinto Nemeño and Dalmacia Dayangco-Nemeño, predecessors-in-interest of the herein respondent heirs, owned two (2) parcels of coconut land located in Manaca, Ozamiz City. The parcels are: Lot No. 4049, with an area of five (5) hectares and covered by Original Certificate of Title (OCT) No. 0-1743 and Lot No. 4035 C-4, consisting of 4,420 square meters and covered by Tax Declaration No. 13750.

In 1979, Dalmacia died survived by her husband, Jacinto, and their six (6) children, to wit: Meliton, Eleuteria, Timoteo, Justo, Saturnino (now deceased) and Felipa.

On February 25, 1985, Jacinto, joined by his five (5) children, namely, Meliton, Eleuteria, Timoteo, Justo and Saturnino, conveyed to his daughter Felipa and the latter's husband Domingo Lumayag the aforementioned Lot Nos. 4049 and 4035 C-4. The instrument of conveyance is denominated as *Deed of Sale with Pacto De Retro*.^[3] Thereunder, it was stipulated that the consideration for the alleged sale of the two (2) aforementioned lots was Twenty Thousand Pesos (P20,000.00) and that the vendors *a retro* have the right to repurchase the same lots within five (5) years from the date of the execution of the instrument on February 25, 1985. It was likewise agreed thereunder that in the event no purchase is effected within the said stipulated period of five (5) years "*conveyance shall become absolute and irrevocable without the necessity of drawing up a new absolute deed of sale, subject to the requirements of law regarding consolidation of ownership of real property.*"

On April 4, 1985, Jacinto died while undergoing treatment at the *MHARS General Hospital* in Ozamiz City.

More than a decade later, or on August 28, 1996, the spouses Domingo Lumayag and Felipa Nemeño-Lumayag filed with the RTC of Ozamiz City a petition for the reconstitution of the owner's duplicate copy of OCT No. 0-1743 covering Lot No. 4049, one of the two lots subject of the earlier *Deed of Sale with Pacto De Retro*. In that petition, the Lumayags alleged that said owner's duplicate copy of OCT No. 0-1743 was in Domingo's possession but the same was lost when a typhoon hit and destroyed the couple's house in Talisay, Cebu on November 12, 1990. The petition was opposed by the other heirs of Jacinto and Dalmacia who claimed that the owner's duplicate copy of the same OCT was actually in the possession and custody of their brother Meliton Nemeño, the administrator of the property, when it was burned in a fire on May 22, 1992. In an order dated December 20, 1996,^[4] the RTC resolved said petition by ordering the issuance of a new owner's duplicate copy of OCT No. 0-1743 and its delivery to the heirs of Jacinto and Dalmacia.

Such were the state of things when, on December 24, 1996, in the same RTC, the heirs of Jacinto and Dalmacia, namely, their children Meliton, Eleuteria, Timoteo and Justo and grandchildren Ricky and Daisy who are the heirs of Saturnino, (hereinafter collectively referred to as the respondent heirs) filed against the spouses Domingo Lumayag and Felipa N. Lumayag a complaint^[5] for *Declaration of Contract as Equitable Mortgage, Accounting and Redemption with Damages*. In their complaint, docketed in the trial court as Civil Case No. 96-69 and raffled to Branch 35 thereof, the plaintiff heirs prayed that the *Deed of Sale with Pacto De Retro* executed on February 25, 1985 in favor of the defendant spouses Domingo Lumayag and Felipa N. Lumayag over Lot Nos. 4049 and 4035 C-4 be declared as an equitable mortgage and considered as already redeemed, with accounting and damages.

Essentially, the complaint alleged that the subject *Deed of Sale with Pacto De Retro* was executed only for the purpose of securing the payment of a loan of P20,000.00 obtained from the defendant spouses in connection with the medication and hospitalization of the then ailing Jacinto Nemeño. To support their claim that the contract in question was an equitable mortgage, the plaintiff heirs materially pointed out the following: (1) the grossly inadequate price of the subject lots considering that Lot No. 4049 with an area of 5 hectares has a market value of P40,760.00 and an assessed value of P15,230.00, as shown by Tax Declaration No. 94-07335-A, while Lot No. 4035 C-4 with an area of 4,420 square meters has a market value of P4,120.00 and an assessed value of P1,460.00, per Tax Declaration No. 94-07355-A; (2) their (plaintiffs') continued payment of realty taxes; (3) the land title and tax declaration remained in the names of Jacinto Nemeño and Dalmacia Dayangco-Nemeño; (4) their possession, particularly Justo Nemeño's, of the subject lots with the petitioner spouses only given two-thirds share of the harvest therefrom; and (5) the *pactum commissorium* stipulation in the subject contract. Thus, the heirs pray for a judgment (a) declaring the subject *Deed of Sale with Pacto de Retro* as an equitable mortgage and considering the lots subject thereof as redeemed; (b) ordering the defendant spouses to render an accounting of the fruits and/or income of the coconut lands from 1985 to 1996 and to return whatever remains of the amount with interest at the legal rate after deducting the P20,000.00 loan; and (c) ordering the same defendants to pay litigation expenses and attorney's fees.

In their Answer,^[6] the spouses Lumayag denied that the contract in question was an equitable mortgage and claimed that the amount of P20,000.00 received by the plaintiff heirs was the consideration for the sale of the two lots and not a loan. By

way of affirmative defenses, the spouses Lumayag asserted that the action was already barred by laches and prescription and the complaint itself states no cause of action.

With the pre-trial conference having failed to bring the parties to any amicable settlement, trial on the merits ensued.

Eventually, in a decision^[7] dated February 3, 1999, the trial court adjudged the subject *Deed of Sale with Pacto De Retro* as an equitable mortgage and ordered the defendant spouses to reconvey Lot Nos. 4049 and 4035 C-4 to the plaintiff heirs for P20,000.00. We quote the *fallo* of the decision:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered to wit:

1. Declaring the Deed of Sale with Pacto de Retro marked annex "A" to the Complaint as equitable mortgage;
2. Ordering the defendants to reconvey the properties in litigation to the plaintiffs in the amount of P20,000.00 within 30 days after the decision has become final and executory;
3. Ordering the defendants to pay the cost of this suit.

SO ORDERED.

Dissatisfied, both parties appealed to the CA. Unfortunately, for failure of the plaintiff heirs to submit their appeal brief, their appeal was dismissed, leaving that of the defendant spouses which was docketed as *CA-G.R. CV No. 63230*.

As stated at the threshold hereof, the appellate court, in its **Decision of September 30, 2003**, affirmed that of the trial court but with the modification that the mortgaged properties are subject to foreclosure should the respondents fail to redeem the same within thirty (30) days from finality of the decision. More specifically, the CA decision dispositively reads:

WHEREFORE, premises considered, the Decision dated February 3, 1999 rendered by the Regional Trial Court, Branch 35, Ozamiz City in Civil Case No. 96-69 is hereby **AFFIRMED** with **MODIFICATION**, in that [petitioners] could foreclose the mortgaged properties in the event [private respondents] fail to exercise their right of redemption within thirty (30) days from the finality of this decision.

SO ORDERED. (Words in brackets supplied.)

Explains the CA in its decision:

xxx xxx xxx

In the instant case, we hold that the deed of sale with *pacto de retro* is actually an equitable mortgage. For one, the supposed price for the sale with *pacto de retro* in the amount of P20,000.00 is unusually inadequate for the two (2) parcels of land, the total area of which is almost 5.5 hectares. Also, [respondents heirs] remained in possession of the subject

properties even after the execution of the subject instrument. Not only did [respondent heirs] retain possession of the subject properties, they also paid for the realty taxes of the same. Indeed, as the trial court found the transaction was one of an equitable mortgage,

Finally, the subject instrument provides that if the vendors a-retro, herein plaintiffs-appellants, fails to exercise their right to redeem or repurchase the subject properties within the period stipulated upon, then the conveyance shall be deemed to be an absolute and irrevocable sale, without the necessity of executing any further deed. Such stipulation is void for being a *pactum commissorium*. xxx

Having ruled that the instrument executed by the parties is one of an equitable mortgage, [respondent heirs] can now redeem the mortgaged properties from [petitioner spouses] within thirty (30) days from finality of this decision. Otherwise, [petitioner spouses] would be given the option to foreclose the mortgaged properties, for as a rule, in a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation. xxx. (Words in brackets supplied).

With their motion for reconsideration having been denied by the appellate court in its equally impugned Resolution of January 9, 2004, petitioners are now with this Court *via* the instant recourse on their submission that:

I

HON. COURT OF APPEALS GRAVELY ERRED IN NOT REVERSING THE DECISION OF THE TRIAL COURT AND DISMISSING THE PRIVATE RESPONDENTS' COMPLAINT ON GROUNDS OF LACHES AND OR PRESCRIPTION.

II

HON. COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE DEED OF SALE WITH PACTO DE RETRO IS ACTUALLY AN EQUITABLE MORTGAGE.

III

THE DECISION RENDERED BY THE HON. COURT OF APPEALS IS NOT SUPPORTED BY THE EVIDENCE AND CONTRARY TO LAW.^[8]

We **DENY**.

Petitioners initially put the CA to task for not dismissing the case considering that the titles to the subject parcels of land had already been consolidated to them by operation of law because the five (5)-year prescriptive period for the respondents to repurchase expired in 1990.

Under a *pacto de retro* sale, title to and ownership of property are immediately