

## SECOND DIVISION

**[ G.R. NO. 142408, September 30, 2005 ]**

**SPOUSES RICARDO ALMENDRALA AND ROSARIO DOROJA,  
PETITIONERS, VS. SPOUSES WING ON NGO AND LILY T. NGO,  
AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated September 30, 1999 in CA-G.R. CV No. 56458, which reversed and set aside the Decision dated April 30, 1997 of the Regional Trial Court, Branch 24, Biñan, Laguna (RTC) upholding petitioners' right of legal redemption; and the CA Resolution dated March 9, 2000, which denied petitioners' motion for reconsideration.

The factual background of the case is as follows:

On February 4, 1992, petitioner spouses Ricardo Almendrala and Rosario Doroja (Almendrala spouses for brevity) filed a complaint for legal redemption and damages against respondent spouses Wing On Ngo and Lily T. Ngo (Ngo spouses for brevity) before the RTC of Biñan, Laguna, docketed as Civil Case No. B-3714 and assigned to Branch 24 thereof.<sup>[2]</sup>

They alleged that: they are the registered owners of a lot situated along Mabini St., San Pedro, Laguna, known as Lot 5-B of the Subdivision Plan Csd-04-003353 with an area of 304 square meters under Transfer Certificate of Title (TCT) No. T-169139; the spouses Josefina and Lysias Manalo<sup>[3]</sup> (Manalo spouses for brevity), Ricardo's sister and brother-in-law, respectively, used to be the registered owners of Lot 5-D also of Subdivision Plan Csd-04-003353, with an area of 22 square meters, covered by TCT No. T-150411, adjoining their lot; they discovered that the Manalo spouses sold the lot to the Ngo spouses for the sum of P44,000.00 per a Deed of Absolute Sale dated July 25, 1991; on August 21, 1991, TCT No. T-234792 was issued in the name of the Ngo spouses; the sale was registered without the requisite vendor's affidavit regarding service of written notices thereof to adjacent owners; the subject land is not only needed by them for a reasonable frontage of the adjoining street but is actually occupied by their own house; and, they are ready, able and willing to exercise their right of legal redemption.

On March 20, 1992, the Almendrala spouses filed a motion to declare the Ngo spouses in default for the failure to file their Answer.<sup>[4]</sup>

On March 26, 1992, the Ngo spouses filed the opposition to the motion for default with motion to admit their answer.<sup>[5]</sup> In their Answer dated March 25, 1992, the

Ngo spouses claimed that they merely relied in good faith on Josefina Manalo's assurance that none of her relatives wanted to buy the property and that they have no intention to oppose the desire of the Almendrala spouses to redeem the same. They prayed that the case be dismissed for being premature and for lack of merit.<sup>[6]</sup>

In its Order dated March 27, 1992, the RTC denied the motion for default and admitted the answer of the Ngo spouses in the interest of substantial justice.<sup>[7]</sup>

At the scheduled pre-trial conference on April 27, 1992, only the Almendrala spouses and their counsel appeared. Thus, upon motion of the Almendrala spouses, the RTC declared the Ngo spouses as in default for their failure to attend the scheduled pre-trial conference. It also authorized the Almendrala spouses to present their evidence *ex-parte*.<sup>[8]</sup>

On May 29, 1992, the Ngo spouses filed a motion for reconsideration.<sup>[9]</sup> On June 4, 1992, the RTC granted the motion for reconsideration and gave the Ngo spouses the right to cross-examine the witnesses of the Almendrala spouses considering that the latter had already presented their evidence.<sup>[10]</sup>

However, for failure of the Ngo spouses to cross-examine the witnesses of the Almendrala spouses on four scheduled hearing dates called for such purpose, the RTC declared, in its Order dated October 7, 1992, that they waived such right.<sup>[11]</sup>

On November 18, 1992, the Ngo spouses filed a motion for reconsideration of the Order dated October 7, 1992.<sup>[12]</sup> On the same date, the Ngo spouses filed a motion for leave to file an amended answer.<sup>[13]</sup> In their amended answer, the Ngo spouses alleged that the Almendrala spouses have neither the right nor privilege to redeem the land in litigation; they intend to use the land for their business needs; the complaint was filed purely for harassment purposes and stated no cause of action.<sup>[14]</sup> They also filed a motion for leave to file third-party complaint against the Manalo spouses for supposed breach of the latter's guarantee as vendors to keep the vendees in peaceful possession of the property sold.<sup>[15]</sup>

On December 2, 1992, the Almendrala spouses filed their opposition to the motion for reconsideration, motion to amend answer and motion to file third-party complaint.<sup>[16]</sup> However, on January 29, 1993, the RTC granted the three motions of the Ngo spouses.<sup>[17]</sup>

On May 7, 1993, the Almendrala spouses filed a motion to declare third-party defendant Manalo spouses in default for failure to file their third-party answer.<sup>[18]</sup> On May 13, 1993, the RTC granted the motion.<sup>[19]</sup>

A day before, however, or on May 12, 1993, the Manalo spouses filed their answer, claiming therein that verbal notice of the questioned sale was given to the Almendrala spouses and that their inclusion in the instant suit was tainted with malice.<sup>[20]</sup> Thus, on May 31, 1993, the Manalo spouses filed a motion for reconsideration of the May 13, 1993 default order.<sup>[21]</sup>

On June 10, 1993, the RTC granted the motion for reconsideration and admitted the

answer of third-party defendants Manalo spouses.<sup>[22]</sup>

On July 5, 1993, the Manalo spouses filed a motion to admit their amended answer to the third-party complaint.<sup>[23]</sup> In their amended answer to the third-party complaint, they allege that: the P44,000.00 consideration stated in the deed of absolute sale actually represented their indebtedness to the Ngo spouses in the sum of P44,000.00; in executing the same deed of absolute sale, it was agreed between the parties that in the meantime they shall be allowed to remain in possession of the property and to later redeem it at the same price; and, that the land was first offered to the Almendrala spouses at P12,000.00 per square meter to no avail. In addition to tendering the sum of P44,000.00 as repayment of their loan as aforesaid, the Manalo spouses prayed that the sale be considered as a plain mortgage and that the Ngo spouses be ordered to reconvey the subject land and to pay their counterclaims for attorney's fees and the costs of the suit.<sup>[24]</sup>

On September 12, 1994, the Ngo spouses and the Manalo spouses executed a compromise agreement with the following provisions:

1. The THIRD PARTY DEFENDANTS hereby acknowledge the THIRD PARTY PLAINTIFFS' ownership over that parcel of land situated in Poblacion, San Pedro, Laguna and now registered in the latter's names under Transfer Certificate of Title No. 23472 of the Registry of Deeds of the Province of Laguna.
2. The THIRD PARTY DEFENDANTS hereby undertake to vacate the aforesaid premises, and voluntarily surrender possession thereof to the THIRD PARTY PLAINTIFFS, on or before November 12, 1994.
3. The THIRD PARTY PLAINTIFFS and THIRD PARTY DEFENDANTS hereby waive and quitclaim their respective claims against each other of whatever nature except the enforcement of this Agreement by means of a writ of execution in the event that they fail to comply with what is incumbent of them to do.<sup>[25]</sup>

On December 26, 1994, the RTC approved the foregoing compromise agreement.<sup>[26]</sup>

On April 30, 1997, the RTC rendered its decision upholding the right of legal redemption of the Almendrala spouses based on: (a) the testimony of Ricardo Almendrala, as corroborated by Ariel Uypico, that the Ngo spouses were selling the lot; (b) the non-approval by the proper building official or municipal engineer of the building design and plan for the lot prepared by Jaime Patalud for the Ngo spouses; (c) the failure of the building design and plan to comply with the legal requirement imposed by the National Building Code and its Implementing Rules and Regulations that a commercial building with an area of 20 to 24 square meters must allow a road right of way of 6 meters in front, 3 meters at the side and 3 meters at the rear. It held that the lot is so small that it cannot be used for any practical purpose within a reasonable time and was bought by the Ngo spouses for speculation.<sup>[27]</sup>

Dissatisfied, the Ngo spouses filed an appeal with the CA which, on September 30, 1999, set aside the decision of the RTC and dismissed the complaint for legal

redemption and damages.<sup>[28]</sup>

The CA held that the Almendrala spouses failed to allege and prove that the disputed area of 22 square meters cannot be used for any practical purpose or was bought by the Ngo spouses merely for speculation; and that on the contrary, the Ngo spouses showed that they planned to use the lot for a two-storey bakery, store and restaurant and had not bought the lot for speculation.

The Almendrala spouses filed a motion for reconsideration<sup>[29]</sup> but it was denied in the CA Resolution dated March 9, 2000.<sup>[30]</sup>

Hence, the present petition for review on certiorari based on the following grounds:

The Court of Appeals committed grave error and abuse of discretion tantamount to lack or excess of jurisdiction when it replaced the trial court's factual findings with its own second hand appreciation.<sup>[31]</sup>

The Court of Appeals gravely erred and committed grave abuse of discretion tantamount to lack or excess of jurisdiction when it favored the patently false and perjured testimonies of the respondent and his witness.<sup>[32]</sup>

Anent the first ground, the Almendrala spouses admit that they did not allege in the complaint that the Ngo spouses bought the lot for speculation. They insist, however, that they offered evidence, without objection from the Ngo spouses, proving that the latter acquired the lot for speculation.

As to the second ground, they argue that the CA gave credence to the testimonies of Wing On Ngo and Jaime Patalud despite the patent perjuries they committed. They maintain that Wing On Ngo lied in four instances, to wit: when he swore that he inspected the lot before he purchased it; when he informed the Almendrala spouses that he was buying the lot; that he revealed to them his alleged project of a two-storey bakery and store; and that they agreed to remove the eave overhanging the lot.

The Ngo spouses, on the other hand, submit that the arguments in the present petition are a mere rehash of those submitted in the motion for reconsideration before the CA and already resolved by the said court.

As to the first ground, the Ngo spouses contend that: speculation was neither alleged nor proven; the Almendrala spouses were duly notified of the sale but they failed to exercise the right of pre-emption or redemption within the 30-day period required by Article 1623<sup>[33]</sup> of the Civil Code; there is no rightful redemption as there was no valid tender of payment or even consignation in court of redemption price but simply an offer to redeem.

On the second ground, they maintain that the alleged perjured testimonies of Wing On Ngo and Jaime Patalud are normal reactions of someone on the witness stand. They submit that the Almendrala spouses lack a full grasp of the applicability of the maxim "*falsus in uno, falsus in omnibus*" because it deals only with the weight of evidence and is not a positive rule of law of universal application. They further

assert that their good faith and honest intention in acquiring the land was evident as early as July 31, 1991 when the National Housing Authority issued a certification approving the request of the original owner, Josefina Manalo, to transfer her rights over the lot in favor of Wing On Ngo.

At any rate, they raise, as additional error for the Court's consideration, the CA's refusal to grant their claim for payment of damages and attorney's fees.

The petition lacks merit.

It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. While jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion,<sup>[34]</sup> none of these exceptions find application here.

The Almendrala spouses maintain that they anchored their cause of action on Article 1622 of the Civil Code, which provides that:

Whenever a piece of urban land which is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation, is about to be re-sold, the owner of the adjoining land shall have the right of pre-emption at a reasonable price.

If the re-sale has been perfected, the owner of the adjoining land shall have a right of redemption, also at a reasonable price.

When two or more owners of adjoining lands wish to exercise the right of pre-emption or redemption, the owner whose intended use of the land in question appears best justified shall be preferred.

There are 4 elements necessary for the application of Article 1622, to wit: (1) that the piece of land is urban land; (2) that the land is so small that a major portion thereof cannot be used for any practical purpose within a reasonable time; (3) that it was bought merely for speculation; and (4) that the land is about to be resold, or that its resale has been perfected. Before a party may avail of the right of pre-