

SECOND DIVISION

[G.R. NO. 142411, October 14, 2005]

**WINIFREDA URSAL, PETITIONER, VS. COURT OF APPEALS, THE
RURAL BANK OF LARENA (SIQUIJOR), INC. AND SPOUSES JESUS
MONESET AND CRISTITA MONESET, 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 seeking the reversal of the Decision^[1] of the Court of Appeals (CA) dated June 28, 1999 and the Resolution dated January 31, 2000 denying petitioner's motion for reconsideration.^[2]

These are the facts:

The spouses Jesus and Cristita Moneset (Monesets) are the registered owners of a 333-square meter land together with a house thereon situated at Sitio Laguna, Basak, Cebu City covered by Transfer Certificate of Title No. 78374.^[3] On January 9, 1985, they executed a "Contract to Sell Lot & House" in favor of petitioner Winifreda Ursal (Ursal), with the following terms and conditions:

...

That the VENDOR (Cristita R. Moneset) offers to SELL and the VENDEE accepts to BUY at the agreed lump sum price of P130,000.00 payable on the installment basis as follows:

1. That on the date of the signing of this agreement, the VENDEE will tender an earnest money or downpayment of P50,000.00 to the VENDOR, and by these presents, the latter hereby acknowledges receipt of said amount from the former;
2. That the balance of the selling price of P80,000.00 shall be paid by the VENDEE to the VENDOR in equal monthly installments of P3,000.00 starting the month of February, 1985, until said balance of the selling price shall be fully paid;
3. That if the VENDEE shall fail or in default to pay six (6) monthly installments to the VENDOR the herein agreement is deemed cancelled, terminated and/or rescinded and in such event, the VENDEE (sic) binds to refund to the VENDOR (sic) the deposit of P50,000.00 and with the latter's (sic) obligation to pay the former (sic) as a corresponding refund for cost of improvements made in the premises by VENDEE;
4. That on the date of receipt of the downpayment of P50,000.00 by the VENDOR, it is mutually agreed for VENDEE to occupy and take physical possession of the

premises as well as for the latter (VENDEE) to keep and hold in possession the corresponding transfer certificate of title No. _____ of the land in question which is the subject of this agreement;

5. That on the date of final payment by the VENDEE to the VENDOR, the latter shall execute at her expense the corresponding document of DEED OF ABSOLUTE SALE for the former as well as the payment of realty clearances, BIR Capital Gain Tax, sales tax or transfer fees and attorney's fees; that, for the issuance of title in VENDEE's name shall be the exclusive account of said VENDEE.^[4]

Petitioner paid the down payment and took possession of the property. She immediately built a concrete perimeter fence and an artesian well, and planted fruit bearing trees and flowering plants thereon which all amounted to P50,000.00. After paying six monthly installments, petitioner stopped paying due to the Monesets' failure to deliver to her the transfer certificate of title of the property as per their agreement; and because of the failure of the Monesets to turn over said title, petitioner failed to have the contract of sale annotated thereon.^[5]

Unknown to petitioner, the Monesets executed on November 5, 1985 an absolute deed of sale in favor of Dr. Rafael Canora, Jr. over the said property for P14,000.00.^[6] On September 15, 1986, the Monesets executed another sale, this time with *pacto de retro* with Restituto Bundalo.^[7] On the same day, Bundalo, as attorney-in-fact of the Monesets, executed a real estate mortgage over said property with Rural Bank of Larena (hereafter Bank) located in Siquijor for the amount of P100,000.00.^[8] The special power of attorney made by the Monesets in favor of Bundalo as well as the real estate mortgage was then annotated on the title on September 16, 1986.^[9] For the failure of the Monesets to pay the loan, the Bank served a notice of extrajudicial foreclosure dated January 27, 1988 on Bundalo.^[10]

On September 30, 1989, Ursal filed an action for declaration of non-effectivity of mortgage and damages against the Monesets, Bundalo and the Bank. She claimed that the defendants committed fraud and/or bad faith in mortgaging the property she earlier bought from the Monesets with a bank located in another island, Siquijor; and the Bank acted in bad faith since it granted the real estate mortgage in spite of its knowledge that the property was in the possession of petitioner.^[11]

The Monesets answered that it was Ursal who stopped paying the agreed monthly installments in breach of their agreement.^[12] The Bank, on the other hand, averred that the title of the property was in the name of "Cristita Radaza Moneset married to Jesus Moneset" and did not show any legal infirmity.^[13]

Bundalo, meanwhile, was not served summons because he could no longer be found at his given address.^[14]

Trial on the merits proceeded. Thereafter, the Regional Trial Court of Cebu City, Branch 24, rendered its decision finding that Ursal is more credible than the Monesets and that the Monesets are liable for damages for fraud and breach of the contract to sell:

The evidence of [Ursal] show that she was the first to acquire a substantial interest

over the lot and house by virtue of the execution of the Contract to Sell (Exh. "A"). After the execution of Exh. "A" plaintiff took possession of the questioned lot and house-after she made a downpayment of P50,000.00. " [S]he paid the installments for six (6) months without fail. [However] plaintiff (stopped) paying the installment because defendant spouses failed to give her the Transfer Certificate of Title over the lot and house despite repeated demands. It is evident then that the first to violate the conditions of Exh. "A" were the defendants Spouses Moneset. This is the reason why plaintiff was not able to annotate Exh. "A" on the TCT. The evidence of plaintiff show that there was no intention on her part to discontinue paying the installments. In a reciprocal obligation, one cannot be compelled to do if the other party fails to do his part (Art. 1169, New Civil Code).

...

The acts of defendant Spouses Moneset in selling again the lot and house in question to Dr. Canora by executing a Deed of Absolute Sale; in selling the same on pacto de retro to defendant Bundalo; and in mortgaging the same to defendant Rural Bank of Larena are plainly and clearly fraudulent because they were done while Exh. "A" was still existing and the transaction was done without notice to the plaintiff. As provided in Art. 1170 of the New Civil Code, those who are guilty of fraud in the performance of their obligation --- and those who in any manner contravene the tenor thereof, are liable for damages.

...

Another ground for liability under this article is when there is fraud/deceit. In the instant case, there was fraud/deceit on the part of the defendant spouses Moneset when they executed the Deed of Sale to Dr. Canora; the Deed of Sale with Pacto de Retro to Bundalo and the Special Power of Attorney for Bundalo to execute for and in their behalf the Real Estate Mortgage with the Rural Bank of Larena knowing fully well that the Contract to Sell house and lot, Exh. "A" was still existing notwithstanding their violation to the provisions thereto. It is therefore crystal clear that defendant spouses Moneset are liable for damages.^[15]

As to the real estate mortgage, the trial court held that the same was valid and the Bank was not under any obligation to look beyond the title, although the present controversy could have been avoided had the Bank been more astute in ascertaining the nature of petitioner's possession of the property, thus:

The Real Estate Mortgage and the Foreclosure Proceedings cannot be considered null and void in the sense that per se the formalities required by law were complied with except for the fact that behind their execution there was fraud, deceit and bad faith on the part of defendant spouses Moneset and Bundalo.

The defendant Rural Bank of Larena for its part could have avoided this situation if the bank appraiser who made the ocular inspection of the subject house and lot went deeper and investigated further when he learned that the owner is not the actual occupant. He was however told by Moneset that the actual occupant was only a lessee. Banking on this information that the actual occupant was only a lessee with no other right over and above such, the bank approved a loan of P100,000.00 in favor of Moneset through Bundalo their attorney-in-fact.

...

Likewise the Rural Bank of Larena had the right to rely on what appeared on the certificate of title of the Monesets and it was under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the certificate.

The approval of the P100,000.00 loan from the Rural Bank of Larena was made possible through the deception and bad faith of defendant spouses Moneset and Bundalo but the pertinent documents were per se in order. The court is of the honest belief that the case against the defendant bank be dismissed for lack of merit. The court however believes that for reasons of equity the bank should give the plaintiff Ursal the preferential right to redeem the subject house and lot.^[16]

The trial court then disposed of the case as follows:

Wherefore premises considered, judgment is hereby rendered in favor of the defendant Rural Bank of Larena dismissing the complaint against it for lack of merit and against the defendant spouses Moneset ordering them to:

1. reimburse to plaintiff Ursal the following:

- a.) downpayment of P50,000.00
- b.) monthly installments for six months at P3,000.00 per month ---
P18,000.00
- c.) expenses improvements P61, 676.52

2. pay to plaintiff the following:

- a.) moral damages ----- P30,000.00
- b.) exemplary damages ----- P20,000.00
- c.) litigation expenses----- P 5,000.00
- d.) attorney's fees ----- P10,000.00
- e.) costs

3. order the defendant Rural Bank of Larena to give the plaintiff the preferential right to redeem the subject house and lot.

SO ORDERED.^[17]

Both Ursal and the Monesets appealed the decision to the CA. Ursal alleged that the Bank was guilty of bad faith for not investigating the presence of Ursal on the property in question, while the Monesets claimed that the trial court erred in giving preferential right to Ursal to redeem the property and in ordering them to pay damages.^[18]

The CA affirmed *in toto* the decision of the trial court. It held that the Bank did not have prior knowledge of the contract to sell the house and lot and the Monesets acted fraudulently thus they cannot be given preferential right to redeem the property and were therefore correctly ordered to pay damages.^[19]

The Monesets filed a motion for reconsideration which was denied outright for having been filed out of time.^[20] Ursal's motion for reconsideration was denied by the CA on January 31, 2000 for lack of merit.^[21]

Hence, the present petition raising the sole error:

"That with grave abuse of discretion amounting to excess of jurisdiction, the Honorable Court of Appeals erred in rendering a decision and Resolution NOT in accordance with law and the applicable rulings of the Supreme Court."^[22]

Petitioner claims that: the Bank was duly informed through its appraiser that the house and lot to be mortgaged by Monesets were in the possession of a lessee; the Bank should have taken this as a cue to investigate further the Monesets' right over the same; the case of *Embrado vs. Court of Appeals* (233 SCRA 335) held that where a purchaser neglects to make the necessary inquiry and closes his eyes to facts which should put a reasonable man on his guard to the possibility of the existence of a defect in his vendor's title, he cannot claim that he is a purchaser in good faith; Sec. 50 of Act 496 provides that where a party has knowledge of a prior existing interest which is unregistered at the time he acquired the land, his knowledge of that prior unregistered interest has the effect of registration as to him and the Torrens system cannot be used as a shield against fraud; following Art. 2176 of the Civil Code, respondent Bank is obliged to pay for the damage done.^[23]

Petitioner then prayed that the Deed of Real Estate Mortgage be declared as non-effective and non-enforceable as far as petitioner is concerned; that she be declared as the absolute owner of the house and lot in question; that the Monesets be ordered to execute a deed of absolute sale covering the subject property; and that the Bank be ordered to direct the collection or payment of the loan of P100,000.00 plus interest from the Monesets for they were the ones who received and enjoyed the said loan.^[24]

On the other hand, respondent Bank in its Comment argues that: its interest in the property was only that of mortgagee and not a purchaser thus its interest is limited only to ascertaining that the mortgagor is the registered owner; the case cited is inapplicable at bar since it involves the purchase of real property; Ursal was purportedly only a lessee of the property, thus as mortgagor who is not entitled to possess the mortgaged property, they no longer considered the lease in the processing and approval of the loan; Sec. 50 of Act No. 496 is also inapplicable since the alleged prior existing interest was only that of a lessee; in any case, it was the Monesets who lied to the Bank anent the real nature of the encumbrance, thus, it is the Monesets who are guilty of fraud and not the Bank.^[25]

In her "Rejoinder,"^[26] petitioner argued that: under the law on mortgage, the mortgagor must be the owner of the property he offers as security of his loan; the