

THIRD DIVISION

[G.R. No. 152168, December 10, 2004]

HEIRS OF THE LATE SPOUSES AURELIO AND ESPERANZA BALITE; NAMELY, ANTONIO T. BALITE, FLOR T. BALITE-ZAMAR, VISITACION T. BALITE-DIFUNTORUM, PEDRO T. BALITE, PABLO T. BALITE, GASPAR T. BALITE, CRISTETA T. BALITE AND AURELIO T. BALITE JR., ALL REPRESENTED BY GASPAR T. BALITE, PETITIONERS, VS. RODRIGO N. LIM, RESPONDENT.

DECISION

PANGANIBAN, J.:

A deed of sale that allegedly states a price lower than the true consideration is nonetheless binding between the parties and their successors in interest. Furthermore, a deed of sale in which the parties clearly intended to transfer ownership of the property cannot be presumed to be an equitable mortgage under Article 1602 of the Civil Code. Finally, an agreement that purports to sell in metes and bounds a specific portion of an unpartitioned co-owned property is not void; it shall effectively transfer the seller's ideal share in the co-ownership.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the February 11, 2002 Decision^[2] of the Court of Appeals (CA) in CA-GR CV No. 65395. The decretal portion of the Decision reads as follows:

"IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Court *a quo* subject of the appeal is hereby **SET ASIDE AND REVERSED** and another Decision is hereby rendered as follows:

1. The "**Deed of Absolute Sale**" (**Exhibit "A"**) is valid only insofar as the *pro indiviso* share of Esperanza Balite over the property covered by Original Certificate of Title No. 10824 is concerned;
2. The Register of Deeds is hereby ordered to cancel Transfer Certificate of Title No. 6683 and to issue another over the entirety of the property covered by Original Certificate of Title No. 10824, upon the payment of the capital gains tax due, as provided for by law, (based on the purchase price of the property in the amount of P1,000,000.00), with the following as co-owners, over the property described therein:
 - a) Each of the [petitioners] over an undivided portion of 975 square meters;

b) The [respondent], with an undivided portion of 9,751 square meters.

3. The [respondent] is hereby ordered to pay to the [petitioners] the amount of P120,000.00, within a period of five (5) months from the finality of the Decision of this Court;
4. In the event that the [respondent] refuses or fails to remit the said amount to the [petitioner] within the period therefor, the rights and obligations of the parties shall be governed by Republic 6552 (Maceda Law)."^[3]

The Facts

The CA summarized the facts in this manner:

"The spouses Aurelio x x x and Esperanza Balite were the owners of a parcel of land, located [at] Poblacion (Barangay Molave), Catarman, Northern Samar, with an area of seventeen thousand five hundred fifty-one (17,551) square meters, [and] covered by Original Certificate of Title [OCT] No. 10824. When Aurelio died intestate [in 1985, his wife], Esperanza Balite, and their children, x x x [petitioners] Antonio Balite, Flor Balite-Zamar, Visitacion Balite-Difuntorum, Pedro Balite, Pablo Balite, Gaspar Balite, Cristeta (Tita) Balite and Aurelio Balite, Jr., inherited the [subject] property and became co-owners thereof, with Esperanza x x x inheriting an undivided [share] of [9,751] square meters.

"In the meantime, Esperanza x x x [became] ill and was in dire need of money for her hospital expenses x x x. She, through her daughter, Cristeta, offered to sell to Rodrigo Lim, [her] undivided share x x x for the price of P1,000,000.00. x x x Esperanza x x x and Rodrigo x x x agreed that, under the "Deed of Absolute Sale", to be executed by Esperanza x x x over the property, it will be made to appear that the purchase price of the property would be P150,000.00, although the actual price agreed upon by them for the property was P1,000,000.00.

"On April 16, 1996, Esperanza x x x executed a "Deed of Absolute Sale" in favor of Rodrigo N. Lim over a portion of the property, covered by [OCT] No. 10824, with an area of 10,000 square meters, for the price of P150,000.00 x x x.

[They] also executed, on the same day, a "Joint Affidavit" under which they declared that the real price of the property was P1,000,000.00, payable to Esperanza x x x, by installments, as follows:

1. P30,000.00 – upon signing today of the document of sale.
2. P170,000.00 – payable upon completion of the actual relocation survey of the land sold by a Geodetic Engineer.
3. P200,000.00 – payable on or before May 15, 1996.

4. P200,000.00 – payable on or before July 15, 1996.
5. P200,000.00 – payable on or before September 15, 1996.
6. P200,000.00 – payable on or before December 15, 1996.

"Only Esperanza and two of her children, namely, Antonio x x x and Cristeta x x x, knew about the said transaction. x x x Geodetic Engineer Bonifacio G. Tasic conducted a subdivision survey of the property and prepared a "Sketch Plan" showing a portion of the property, identified as Lot 243 with an area of 10,000 square meters, under the name Rodrigo N. Lim.

"The "Sketch Plan" was signed by Rodrigo x x x and Esperanza. Thereafter, Rodrigo x x x took actual possession of the property and introduced improvements thereon. He remitted to Esperanza x x x and Cristeta x x x sums of money in partial payments of the x x x property for which he signed "Receipts".

"Gaspar, Visitacion, Flor, Pedro and Aurelio, Jr. x x x learned of the sale, and on August 21, 1996, they wrote a letter to the Register of Deeds [RD] of Northern Samar, [saying] that they [were] not x x x informed of the sale of a portion of the said property by their mother x x x nor did they give their consent thereto, and requested the [RD] to:

"x x x hold in abeyance any processal or approval of any application for registration of title of ownership in the name of the buyer of said lot, which has not yet been partitioned judicially or extrajudicially, until the issue of the legality/validity of the above sale has been cleared."

"On August 24, 1996, Antonio x x x received from Rodrigo x x x, the amount of P30,000.00 in partial payment of [the] property and signed a "Receipt" for the said amount, declaring therein that "the remaining balance of P350,000.00 shall personally and directly be released to my mother, Esperanza Balite, only." However, Rodrigo x x x drew and issued RCBC Check No. 309171, dated August 26, 1996, [payable] to the order of Antonio Balite in the amount of P30,000.00 in partial payment of the property.

"On October 1, 1996, Esperanza x x x executed a "Special Power of Attorney" appointing her son, Antonio, to collect and receive, from Rodrigo, the balance of the purchase price of the x x x property and to sign the appropriate documents therefor.

"On October 23, 1996, Esperanza signed a letter addressed to Rodrigo informing the latter that her children did not agree to the sale of the property to him and that she was withdrawing all her commitments until the validity of the sale is finally resolved:

x x x x x x x x x

"On October 31, 1996, Esperanza died intestate and was survived by her

aforenamed children.

"[Meanwhile], Rodrigo caused to be published, in the Samar Reporter, on November 14, 21 and 28, 1996, the aforesaid "Deed of Absolute Sale". Earlier, on November 21, 1996, Antonio received the amount of P10,000.00 from Rodrigo for the payment of the estate tax due from the estate of Esperanza.

"Also, the capital gains tax, in the amount of P14,506.25, based on the purchase price of P150,000.00 appearing on the "Deed of Absolute Sale", was paid to the Bureau of Internal Revenue which issued a "Certification" of said payments, on March 5, 1997, authorizing the registration of the "Deed of Absolute Sale" x x x. However, the [RD] refused to issue a title over the property to and under the name of Rodrigo unless and until the owner's duplicate of OCT No. 10824 was presented to [it]. Rodrigo filed a "Petition for Mandamus" against the RD with the Regional Trial Court of Northern Samar (**Rodrigo Lim versus Fernando Abella, Special Civil Case No. 48**). x x x. On June 13, 1997, the court issued an Order to the RD to cancel OCT No. 10824 and to issue a certificate of title over Lot 243 under the name of Rodrigo.

"On June 27, 1997, [petitioners] filed a complaint against Rodrigo with the Regional Trial Court of Northern Samar, entitled and docketed as "**Heirs of the Spouses Aurelio Balite, et al. versus Rodrigo Lim, Civil Case No. 920**, for "**Annulment of Sale, Quieting of Title, Injunction and Damages** x x x, [the origin of the instant case.]

x x x x x x x x x

"The [petitioners] had a "**Notice of Lis Pendens**", dated June 23, 1997, annotated, on June 27, 1997, at the dorsal portion of OCT No. 10824.

"In the meantime, the RD cancelled, on July 10, 1997, OCT No. 10824 and issued Transfer Certificate of Title [TCT] No. 6683 to and under the name of Rodrigo over Lot 243. The "Notice of Lis Pendens" x x x was carried over in TCT No. 6683.

"Subsequently, Rodrigo secured a loan from the Rizal Commercial Banking Corporation in the amount of P2,000,000.00 and executed a "Real Estate Mortgage" over the [subject] property as security therefor.

"On motion of the [petitioners], they were granted x x x leave to file an "Amended Complaint" impleading the bank as [additional] party-defendant. On November 26, 1997, [petitioners] filed their "Amended Complaint".

The [respondent] opposed the "Amended Complaint" x x x contending that it was improper for [petitioners] to join, in their complaint, an ordinary civil action for the nullification of the "Real Estate Mortgage" executed by the respondent in favor of the Bank as the action of the petitioners before the court was a special civil action.

"On March 30, 1998, the court issued an Order rejecting the "Amended Complaint" of the petitioners on the grounds that: (a) the Bank cannot be impleaded as party-defendant under Rule 63, Section 1 of the 1997 Rules of Civil Procedure; (b) the "Amended Complaint" constituted a collateral attack on TCT No. 6683. The [petitioners] did not file any motion for the reconsideration of the order of the court."^[4]

The trial court dismissed the Complaint and ordered the cancellation of the *lis pendens* annotated at the back of TCT No. 6683. It held that, pursuant to Article 493 of the Civil Code, a co-owner has the right to sell his/her undivided share. The sale made by a co-owner is not invalidated by the absence of the consent of the other co-owners. Hence, the sale by Esperanza of the 10,000-square-meter portion of the property was valid; the excess from her undivided share should be taken from the undivided shares of Cristeta and Antonio, who expressly agreed to and benefited from the sale.

Ruling of the Court of Appeals

The CA held that the sale was valid and binding insofar as Esperanza Balite's undivided share of the property was concerned. It affirmed the trial court's ruling that the lack of consent of the co-owners did not nullify the sale. The buyer, respondent herein, became a co-owner of the property to the extent of the *pro indiviso* share of the vendor, subject to the portion that may be allotted to him upon the termination of the co-ownership. The appellate court disagreed with the averment of petitioners that the registration of the sale and the issuance of TCT No. 6683 was ineffective and that they became the owners of the share of Esperanza upon the latter's death.

The CA likewise rejected petitioners' claim that the sale was void allegedly because the actual purchase price of the property was not stated in the Deed of Absolute Sale. It found that the true and correct consideration for the sale was P1,000,000 as declared by Esperanza and respondent in their Joint Affidavit. Applying Article 1353^[5] of the Civil Code, it held that the falsity of the price or consideration stated in the Deed did not render it void. The CA pointed out, however, that the State retained the right to recover the capital gains tax based on the true price of P1,000,000.

The appellate court rejected petitioners' contention that, because of the allegedly unconscionably low and inadequate consideration involved, the transaction covered by the Deed was an equitable mortgage under Article 1602 of the Civil Code. Observing that the argument had never been raised in the court *a quo*, it ruled that petitioners were proscribed from making this claim, for the first time, on appeal.

The CA further held that the remaining liability of respondent was P120,000. It relied on the Receipt dated August 24, 1996, which stated that his outstanding balance for the consideration was P350,000. It deducted therefrom the amounts of P30,000 received by Antonio on August 27, 1996; and P200,000, which was the amount of the check dated September 15, 1996, issued by respondent payable to Esperanza.

Finally, the appellate court noted that the mortgage over the property had been executed after the filing of the Complaint. What petitioners should have filed was a