

## SECOND DIVISION

[ G.R. No. 120724-25, May 21, 1998 ]

**FERNANDO T. MATE, PETITIONER, VS. THE HONORABLE COURT  
OF APPEALS AND INOCENCIO TAN, RESPONDENTS.**

### DECISION

**MARTINEZ, J.:**

In this petition for review, petitioner assails the Decision<sup>[1]</sup> of the Court of Appeals dated August 29, 1994 in CA-G.R. CV No. 28225-26, which affirmed with modification the decision of the trial court, the dispositive portion of which reads, to wit:

"WHEREFORE, this Court finds the Deed of Sale with Right of Repurchase executed October 6, 1986 valid and binding between plaintiff and defendant (as vendor and vendee-a-retro respectively); that as the period to redeem has expired, ownership thereof was consolidated by operation of law, and the Register of Deeds is hereby ordered to REGISTER this decision consolidating the defendant's ownership over the properties covered by Transfer Certificate of Title No. T-90-71, covering Lot 8; Original Certificate of Title No. N-311 covering Lot 5370, all of the Tacloban Cadastre, and issuing to defendant Inocencio Tan his titles after cancellation of the titles presently registered in plaintiff Fernando T. Mate's name and that of his wife.

"The plaintiff Fernando Mate is further ordered to pay defendant the sum of ONE HUNDRED FORTY THOUSAND (P140,000.00) PESOS, for and as attorney's fees.

"With costs against the plaintiff Fernando Mate.

"SO ORDERED."<sup>[2]</sup>

The facts of this case, as summarized in the petition, are reproduced hereunder:

"On October 6, 1986 Josefina R. Rey (hereafter referred to as "Josie" for short) and private respondent went to the residence of petitioner at Tacloban City. Josie who is a cousin of petitioner's wife solicited his help to stave off her and her family's prosecution by private respondent for violation of B.P. 22 on account of the rubber checks that she, her mother, sister and brother issued to private respondent amounting to P4,432,067.00. She requested petitioner to cede to private respondent his three (3) lots in Tacloban City in order to placate him. On hearing Josie's proposal, he immediately rejected it as he owed private respondent nothing and he was under no obligation to convey to him his properties. Furthermore, his lots were not for sale. Josie explained to him that he was in no danger of losing his properties as he will merely

execute a simulated document transferring them to private respondent but they will be redeemed by her with her own funds. After a long discussion, he agreed to execute a fictitious deed of sale with right to repurchase covering his three (3) lots mentioned above subject to the following conditions:

1. The amount to be stated in the document is P1,400,000.00 with interest thereon at 5% a month;
2. The properties will be repurchased within six (6) months or on or before April 4, 1987;
3. Although it would appear in the document that petitioner is the vendor, it is Josie who will provide the money for the redemption of the properties with her own funds;
4. Titles to the properties will be delivered to private respondent but the sale will not be registered in the Register of Deeds and annotated on the titles.

"To assure petitioner that Josie will redeem the aforesaid properties, she issued to him two (2) BPI checks both postdated December 15, 1986. One check was for P1,400,000.00 supposedly for the selling price and the other was for P420,000.00 corresponding to the interests for 6 months. Immediately thereafter petitioner prepared the Deed of Sale with Right to Repurchase (Exh. A) and after it has been signed and notarized, it was given to private respondent together with the titles of the properties and the latter did not register the transaction in the Register of Deeds as agreed upon.

"On January 14, 1987, petitioner deposited the check for P1,400,000.00 (Exh. B) in his account at the United Coconut Planters Bank and the other check for P420,000.00 (Exh. D) in his account at METROBANK preparatory to the redemption of his properties. However, both of them were dishonored by the drawee bank for having been drawn against a closed account. Realizing that he was swindled, he sent Josie a telegram about her checks and when she failed to respond, he went to Manila to look for her but she could not be found. So he returned to Tacloban City and filed Criminal Cases Nos. 8310 and 8312 against her for violation of B.P. 22 but the cases were later archived as the accused (Josie) could not be found as she went into hiding. To protect his interest, he filed Civil Case No. 7396 of the Regional Trial Court of Leyte, Branch VII, entitled 'Fernando T. Mate vs. Josefina R. Rey and Inocencio Tan' for Annulment of Contract with Damages. Defendant Josefina R. Rey (Josie) was declared in default and the case proceeded against private respondent. But during the trial the RTC court asked private respondent to file an action for consolidation of ownership of the properties subject of the sale and pursuant thereto he filed Civil Case No. 7587 that was consolidated with the case he filed earlier which were later decided jointly by the trial court in favor of private respondent and was subsequently appealed to respondent Court that affirmed it with modification. Thereupon, petitioner