

## SECOND DIVISION

[ G.R. No. 125055, October 30, 1998 ]

**A. FRANCISCO REALTY AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. COURT OF APPEALS AND SPOUSES ROMULO  
S.A. JAVILLONAR AND ERLINDA P. JAVILLONAR, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari of the decision rendered on February 29, 1996 by the Court of Appeals<sup>[1]</sup> reversing, *in toto*, the decision of the Regional Trial Court of Pasig City in Civil Case No. 62290, as well as the appellate court's resolution of May 7, 1996 denying reconsideration.

Petitioner A. Francisco Realty and Development Corporation granted a loan of P7.5 Million to private respondents, the spouses Romulo and Erlinda Javillonar, in consideration of which the latter executed the following documents: (a) a promissory note, dated November 27, 1991, stating an interest charge of 4% per month for six months; (b) a deed of mortgage over realty covered by TCT No. 58748, together with the improvements thereon; and (c) an undated deed of sale of the mortgaged property in favor of the mortgagee, petitioner A. Francisco Realty.<sup>[2]</sup>

The interest on the said loan was to be paid in four installments: half of the total amount agreed upon (P900,000.00) to be paid in advance through a deduction from the proceeds of the loan, while the balance to be paid monthly by means of checks post-dated March 27, April 27, and May 27, 1992. The promissory note expressly provided that upon "failure of the MORTGAGOR [private respondents] to pay the interest without prior arrangement with the MORTGAGEE [petitioner], full possession of the property will be transferred and the deed of sale will be registered."<sup>[3]</sup> For this purpose, the owner's duplicate of TCT No. 58748 was delivered to petitioner A. Francisco Realty.

Petitioner claims that private respondents failed to pay the interest and, as a consequence, it registered the sale of the land in its favor on February 21, 1992. As a result, TCT No. 58748 was cancelled and in lieu thereof TCT No. PT-85569 was issued in the name of petitioner A. Francisco Realty.<sup>[4]</sup>

Private respondents subsequently obtained an additional loan of P2.5 Million from petitioner on March 13, 1992 for which they signed a promissory note which reads:

#### PROMISSORY NOTE

For value received, I promise to pay A. FRANCISCO REALTY AND DEVELOPMENT CORPORATION, the additional sum of Two Million Five Hundred Thousand Pesos (P2,500,000.00) on or before April 27, 1992,

with interest at the rate of four percent (4%) a month until fully paid and if after the said date this note and/or the other promissory note of P7.5 Million remains unpaid and/or unsettled, without any need for prior demand or notification, I promise to vacate voluntarily and willfully and/or allow A. FRANCISCO REALTY AND DEVELOPMENT CORPORATION to appropriate and occupy for their exclusive use the real property located at 56 Dragonfly, Valle Verde VI, Pasig, Metro Manila.<sup>[5]</sup>

Petitioner demanded possession of the mortgaged realty and the payment of 4% monthly interest from May 1992, plus surcharges. As respondent spouses refused to vacate, petitioner filed the present action for possession before the Regional Trial Court in Pasig City.<sup>[6]</sup>

In their answer, respondents admitted liability on the loan but alleged that it was not their intent to sell the realty as the undated deed of sale was executed by them merely as an additional security for the payment of their loan. Furthermore, they claimed that they were not notified of the registration of the sale in favor of petitioner A. Francisco Realty and that there was no interest then unpaid as they had in fact been paying interest even subsequent to the registration of the sale. As an alternative defense, respondents contended that the complaint was actually for ejectment and, therefore, the Regional Trial Court had no jurisdiction to try the case. As counterclaim, respondents sought the cancellation of TCT No. PT-85569 as secured by petitioner and the issuance of a new title evidencing their ownership of the property.<sup>[7]</sup>

On December 19, 1992, the Regional Trial Court rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, prescinding from the foregoing considerations, judgment is hereby rendered declaring as legal and valid, the right of ownership of A. Francisco Realty And Development Corporation, over the property subject of this case and now registered in its name as owner thereof, under TCT No. 85569 of the Register of Deeds of Rizal, situated at No. 56 Dragonfly Street, Valle Verde VI, Pasig, Metro Manila.

Consequently, defendants are hereby ordered to cease and desist from further committing acts of dispossession or from withholding possession from plaintiff, of the said property as herein described and specified.

Claim for damages in all its forms, however, including attorney's fees, are hereby denied, no competent proofs having been adduced on record, in support thereof.<sup>[8]</sup>

Respondent spouses appealed to the Court of Appeals which reversed the decision of the trial court and dismissed the complaint against them. The appellate court ruled that the Regional Trial Court had no jurisdiction over the case because it was actually an action for unlawful detainer which is exclusively cognizable by municipal trial courts. Furthermore, it ruled that, even presuming jurisdiction of the trial court, the deed of sale was void for being in fact a *pactum commissorium* which is prohibited by Art. 2088 of the Civil Code.

Petitioner A. Francisco Realty filed a motion for reconsideration, but the Court of

Appeals denied the motion in its resolution, dated May 7, 1996. Hence, this petition for review on certiorari raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE REGIONAL TRIAL COURT HAD NO JURISDICTION OVER THE COMPLAINT FILED BY THE PETITIONER.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE CONTRACTUAL DOCUMENTS SUBJECT OF THE INSTANT CASE ARE CONSTITUTIVE OF PACTUM COMMISSORIUM AS DEFINED UNDER ARTICLE 2088 OF THE CIVIL CODE OF THE PHILIPPINES.

On the first issue, the appellate court stated:

Ostensibly, the cause of action in the complaint indicates a case for unlawful detainer, as contra-distinguished from *accion publiciana*. As contemplated by Rule 70 of the Rules of Court, an action for unlawful detainer which falls under the exclusive jurisdiction of the Metropolitan or Municipal Trial Courts, is defined as withholding from by a person from another for not more than one year, the possession of the land or building to which the latter is entitled after the expiration or termination of the supposed rights to hold possession by virtue of a contract, express or implied. (*Tenorio vs. Gamboa*, 81 Phil. 54; *Dikit vs. Dicaciano*, 89 Phil. 44). If no action is initiated for forcible entry or unlawful detainer within the expiration of the 1 year period, the case may still be filed under the plenary action to recover possession by *accion publiciana* before the Court of First Instance (now the Regional Trial Court) (*Medina vs. Valdellon*, 63 SCRA 278). In plain language, the case at bar is a legitimate ejectment case filed within the 1 year period from the jurisdictional demand to vacate. Thus, the Regional Trial Court has no jurisdiction over the case. Accordingly, under Section 33 of B.P. Blg. 129 Municipal Trial Courts are vested with the exclusive original jurisdiction over forcible entry and unlawful detainer case. (*Sen Po Ek Marketing Corp. vs. CA*, 212 SCRA 154 [1990])[<sup>9</sup>]

We think the appellate court is in error. What really distinguishes an action for unlawful detainer from a possessory action (*accion publiciana*) and from a reivindicatory action (*accion reivindicatoria*) is that the first is limited to the question of possession *de facto*.

An unlawful detainer suit (*accion interdictal*) together with forcible entry are the two forms of an ejectment suit that may be filed to recover possession of real property. Aside from the summary action of ejectment, *accion publiciana* or the plenary action to recover the right of possession and *accion reivindicatoria* or the action to recover ownership which includes recovery of possession, make up the three kinds of actions to judicially recover possession.

Illegal detainer consists in withholding by a person from another of the possession of a land or building to which the latter is entitled after the expiration or termination of the former's right to hold possession by virtue of a contract, express or implied. An ejectment suit is brought

before the proper inferior court to recover physical possession only or possession *de facto* and not possession *de jure*, where dispossession has lasted for not more than one year. Forcible entry and unlawful detainer are quieting processes and the one-year time bar to the suit is in pursuance of the summary nature of the action. The use of summary procedure in ejectment cases is intended to provide an expeditious means of protecting actual possession or right to possession of the property. They are not processes to determine the actual title to an estate. If at all, inferior courts are empowered to rule on the question of ownership raised by the defendant in such suits, only to resolve the issue of possession. Its determination on the ownership issue is, however, not conclusive.<sup>[10]</sup>

The allegations in both the original and the amended complaints of petitioner before the trial court clearly raise issues involving more than the question of possession, to wit: (a) the validity of the transfer of ownership to petitioner; (b) the alleged new liability of private respondents for P400,000.00 a month from the time petitioner made its demand on them to vacate; and (c) the alleged continuing liability of private respondents under both loans to pay interest and surcharges on such. As petitioner A. Francisco Realty alleged in its amended complaint:

5. To secure the payment of the sum of P7.5 Million together with the monthly interest, the defendant spouses agreed to execute a Deed of Mortgage over the property with the express condition that if and when they fail to pay monthly interest or any infringement thereof they agreed to convert the mortgage into a Deed of Absolute Sale in favor of the plaintiff by executing Deed of Sale thereto, copy of which is hereto attached and incorporated herein as Annex "A";

6. That in order to authorize the Register of Deeds into registering the Absolute Sale and transfer to the plaintiff, defendant delivered unto the plaintiff the said Deed of Sale together with the original owner's copy of Transfer Certificate of Title No. 58748 of the Registry of Rizal, copy of which is hereto attached and made an integral part herein as Annex "B";

7. That defendant spouses later secured from the plaintiff an additional loan of P2.5 Million with the same condition as aforementioned with 4% monthly interest;

8. That defendants spouses failed to pay the stipulated monthly interest and as per agreement of the parties, plaintiff recorded and registered the Absolute Deed of Sale in its favor on and was issued Transfer Certificate of Title No. PT-85569, copy of which is hereto attached and incorporated herein as Annex "C";

9. That upon registration and transfer of the Transfer Certificate of Title in the name of the plaintiff, copy of which is hereto attached and incorporated herein as Annex "C", plaintiff demanded the surrender of the possession of the above-described parcel of land together with the improvements thereon, but defendants failed and refused to surrender the same to the plaintiff without justifiable reasons thereto; Neither did the defendants pay the interest of 4% a month from May, 1992 plus