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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FROILAN DALA,
Petitioner,

G.R. No. 205672

-versus-

EDITHA A. AUTICIO,
Respondent.

Members:
LEONEN, *SAJ, Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

JUN 22 2022

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DECISION

LAZARO-JAVIER, J.:

The Case

Petitioner Froilan Dala assails¹ the following dispositions of the Court of Appeals in CA-G.R. CEB-CV No. 02713 entitled *Editha A. Auticio v. Froilan Dala*:

¹ *Rollo*, pp. 8-16.

1.) **Decision**² dated August 29, 2012 holding that the contract executed by the parties was a *pacto de retro* sale; and

2.) **Resolution**³ dated December 19, 2012 denying petitioner's motion for reconsideration.

Antecedents

In her *Petition to Consolidate Ownership under Article 1607 of the Civil Code*⁴ dated February 21, 2002, respondent Editha A. Auticio sought to consolidate in her name, the ownership of a 1,378 square meter⁵ parcel of land covered by Tax Declaration No. 99-04019-00903 situated at Barangay Cabong, Borongan, Eastern Samar.

She prayed for these forms of relief:

1) a Temporary Restraining Order be issued enjoining petitioner from selling, encumbering, or transferring title to the property;

2) she be declared the absolute owner of the property; and

3) attorney's fees of 25% of the total amount due, expenses and costs be awarded to her.⁶

The Petition was raffled to the Regional Trial Court (RTC)-Branch 1, Borongan, Eastern Samar.

Respondent alleged that on June 4, 2001, she bought the land from petitioner for ₱32,000.00, and executed the following *Deed of Sale Under Pacto de Retro* with him –

DEED OF SALE UNDER PACTO DE RETRO

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF SALE WITH PACTO DE RETRO, made and executed by and between,

² Penned by Associate Justice Melchor Q.C. Sadang, concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles, *rollo*, pp. 21–35.

³ *Id.* at 42–43.

⁴ Records, RTC Civil Case No. 3736, pp. 2–4.

⁵ TSN dated February 13, 2007, p. 2.

⁶ Records, RTC Civil Case No. 3736, p. 3.

FROILAN DALA, of legal age, single[,] and resident of Brgy. Lalawigan, Borongan[,] Eastern Samar, hereinafter called the VENDOR,

-and-

EDITHA A. AUTICIO, of legal age, married[,] and resident of Baybay, Borongan[,] Eastern Samar, hereinafter called the VENDEE,

Witnesseth:

That the VENDOR is the absolute and exclusive owner of the following described real property:

A parcel of coconut land, located in Cabong, Borongan[,] E. Samar, covered by ARP No. 99-04019-00903, bounded on the North by National Road, South by 029 Jovencio Obina, East by 015 Rufino Apura, West by 059 Evelyn Balagapo, containing an area of 1,378 sq. meters.

That for and in consideration of the sum of [THIRTY-TWO] THOUSAND PESOS (P32,000.00) Philippine currency, to him in hand paid and receipt whereof is hereby acknowledged, does hereby SELL, TRANSFER, and CONVEY, under PACTO DE RETRO, unto the said VENDEE, her heirs and assigns, the above described real property free from all liens and encumbrances.

That the VENDOR in executing this conveyance, hereby reserves the right to REPURCHASE[,] and the VENDEE, in accepting the same, hereby obligates himself to RESELL, the property herein conveyed within a period of six (6) months, from and after the date of this instrument for the same price of P32,000.00, **provided[,] however, that if the VENDOR shall fail to exercise his right to repurchase as herein granted within the period stipulated, then this conveyance shall become absolute and irrevocable, without the necessity of drawing up a new deed of absolute sale, subject to the requirement of the law regarding consolidation of ownership of real property.**

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this 4th day of June 2001 at Borongan[,] E. Samar.

Sgd.
FROILAN DALA
Vendor

Sgd.
EDITHA AUTICIO
Vendee⁷

x x x x (Emphasis supplied)

Respondent claimed that the six (6)-month redemption period from June 4, 2001 had expired without petitioner buying back the land. Thus, she filed the Petition to consolidate her ownership of the land.⁸ A year later, she was issued a tax declaration for the land under her name.⁹

⁷ Records, RTC Case No. 3736, p. 6.

⁸ TSN dated December 5, 2006, p. 5.

⁹ Transferred date May 16, 2003, TSN dated February 13, 2007, p. 3.

Respondent alleged that petitioner had requested the extension of the redemption period, which she however refused. He then surreptitiously encumbered the same land and even offered it for sale. His actions, according to respondent, delayed the consolidation of the land's ownership in her name.¹⁰

In his Answer,¹¹ petitioner countered that the Deed did not express the true agreement between him and respondent. He claimed that their true agreement was a loan. He borrowed ₱20,000.00 from respondent at ten percent (10%) interest per month for six (6) months and put up the land as a security.

He averred that his sister, Hermana Apelado (*Hermana*), had introduced him to respondent who was a known money lender in their municipality. He claimed that as part of respondent's requirements to lend him the money, he had to surrender Tax Declaration No. 99-04019-00903 over the land. She allegedly then compelled him to sign the Deed. He referred to the value he had received for the land as being grossly disproportionate to the land's then market value.¹²

Petitioner continued to possess the land. He paid the realty taxes. He offered to pay the loan plus interest at ₱32,000.00. Respondent, however, refused his offer. He manifested his willingness to consign this amount with the trial court.¹³

In his Answer, he prayed that the contract be declared as an equitable mortgage, and that petitioner be ordered to cease and desist from performing acts of ownership over the land. By way of counterclaim, he sought the following:

- 1) moral damages of ₱20,000.00;
- 2) attorney's fees of ₱10,000.00;
- 3) ₱1,000.00 per appearance; and
- 4) costs of suit¹⁴

Petitioner's sister, Hermana,¹⁵ corroborated his testimony that the agreement between petitioner and respondent was for the property to serve as collateral for the loan he had obtained from her. She alleged that respondent had instructed her and petitioner to go to a certain Atty. Reynato Noel Echague

¹⁰ *Rollo*, p. 22.

¹¹ Records, RTC Case No. 3736, pp. 11-13.

¹² *Id.* at 12

¹³ *Id.*

¹⁴ *Id.*

¹⁵ TSN dated December 3, 2007, pp. 1-7.

for the drafting and signing of the Deed. She claimed that this lawyer did not explain to them the nature and consequences of this Deed.

Petitioner did not offer any documentary evidence. Instead, he filed a manifestation submitting the case for resolution.¹⁶

Ruling of the Trial Court

By Decision¹⁷ dated July 21, 2008, the trial court ruled in respondent's favor:

WHEREFORE, and in view of all the for[e]going considerations, judgment is hereby rendered in favor of herein petitioner declaring the subject contract to be a true sale with right to repurchase or a Deed of Sale with Pacto de Retro. However, the matter of the real nature of the contract having been submitted for judicial resolution, and finding a doubt as to the real intention of the parties in executing the contract[,] the application of the rule provided under the third (3rd) paragraph of Article 1606 of the Civil Code having been [met] and proper the herein vendor a retro, Froilan Dala is hereby allowed to repurchase the property sold within 30 days in accordance with the stated Par. 3, Article 1606 of the Civil Code of the Philippines, in the [a]mount of P32,000.00 plus the sum of P182,000.00 as interest of the P20,000.00 for ninety-one (91) months starting from January 2002 to July 2008, or a total amount of Two Hundred Fourteen Thousand (P214,000.00) Pesos.

Further, should respondent [fail] to repurchase the land within the above stated period, the petitioner should become the absolute owner of the land in question and her absolute ownership thereof is considered consolidated.

No attorney's fees, litigation expenses[,] and cost[s], there being no legal basis for the award of the same.

SO ORDERED.¹⁸

The trial court held that the parties entered into a *pacto de retro* sale. For petitioner's failure to repurchase the property within the stipulated period, absolute ownership and possession over the same was deemed vested in respondent.

Citing Article 1606¹⁹ of the Civil Code, the trial court allowed petitioner to repurchase the property within thirty (30) days from finality of

¹⁶ *Rollo*, p. 23.

¹⁷ *Id.* at 48-67.

¹⁸ *Id.* at 66-67.

¹⁹ Article 1606. The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.



judgment. It also ordered petitioner to pay respondent interest of ten percent (10%) per month reckoned from January 2002 to July 2008. Respondent's claim for attorney's fees was denied for lack of basis.

Proceedings before the Court of Appeals

On appeal, petitioner reiterated that his contract with respondent was an equitable mortgage. For one, he did not intend to sell and transfer ownership of the property but only to put it up as collateral for the loan of ₱32,000.00.²⁰ For another, he remained in possession of the property even after the execution of the contract. He also faulted the trial court for holding that the interest of ten percent (10%) per month was not exorbitant.²¹

Despite notice, respondent did not file her appellee's brief. Hence, she was deemed to have waived her right to do so.

Ruling of the Court of Appeals

In its assailed Decision²² dated August 29, 2012, the Court of Appeals modified, thus:

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of Branch 1, Regional Trial Court (RTC) of Borongan City, Eastern Samar in Civil Case No. 3736 dated July 21, 2008 is **AFFIRMED with MODIFICATION** in that 1) the dispositive portion allowing the vendor a retro, herein respondent-appellant Froilan Dala, the opportunity to repurchase the property within thirty (30) days in accordance with the third paragraph of Article 1606 of the Civil Code and ordering him to pay the amount of P32,000.00 plus P182,000.00 representing interest for ninety-one (91) months, or the total amount of P214,000.00 is hereby **DELETED** and **SET ASIDE** and 2) petitioner-appellee Editha Auticio is declared the absolute owner of the real property.

SO ORDERED.²³

The appellate court ruled that petitioner's continuous possession of the property after the sale did not by itself establish equitable mortgage. On the other hand, respondent's payment²⁴ of more than double the assessed value²⁵ of the property negated petitioner's claim of equitable mortgage. More, petitioner's offer to repurchase the property came too late after the redemption

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

²⁰ ₱20,000 principal with 10% interest per month for six (6) months, TSN dated October 10, 2007, p. 6.

²¹ *Rollo*, p. 15.

²² *Id.* at 21-35.

²³ *Id.* at 34.

²⁴ ₱32,000.00, *rollo*, p. 26.

²⁵ ₱16,860.00, *id.*

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period had already expired. Neither did he tender payment nor consign the money in court.

The appellate court, thus, resolved to delete the trial court's directive to allow petitioner the opportunity to repurchase the property within thirty (30) days in accordance with Article 1606 of the Civil Code and for petitioner to pay interest.²⁶

Petitioner moved²⁷ to reconsider but was denied by Resolution²⁸ dated December 19, 2012.

The Present Petition

Petitioner now seeks affirmative relief from the Court, reiterating that the contract between him and respondent was an equitable mortgage. He asserts anew that he was in possession of the property from the execution of the contract on June 4, 2001 until May 16, 2003. He likewise faults the Court of Appeals for not holding that the ten percent (10%) interest per month was exorbitant.²⁹

In her Comment,³⁰ respondent defends the assailed rulings of the Court of Appeals. She maintains that her transaction with petitioner was a contract of sale with *pacto de retro* and the latter failed to redeem the property within the redemption period. As it was, petitioner only attempted to redeem the property after the petition for consolidation was already filed in court. He cannot, therefore, invoke Article 1606³¹ of the Civil Code on equitable mortgage.

Our Ruling

We reverse.

In a **sale with right to repurchase** (*pacto de retro*), the title and ownership of the property sold are immediately vested in the vendee, subject to the vendor's exercise of his or her right of redemption within the stipulated

²⁶ *Rollo*, p. 34.

²⁷ *Id.* at 36-40.

²⁸ Penned by Associate Justice Gabriel T. Ingles. concurred in by Associate Justices Pampio A. Abarintos and Marilyn B. Lagura-Yap, *id.* at 42-43.

²⁹ *Id.* at 16.

³⁰ *Id.* at 97-100.

³¹ Article 1606. The right referred to in article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase. (1508a) (Civil Code of the Philippines, Republic Act No. 386, Approved on June 18, 1949).

period.³² In fine, the failure of the vendor *a retro* to repurchase the property vests upon the vendee *a retro*, by operation of law, absolute title and ownership over the property sold.³³

Pacto de retro sales are governed by the Civil Code, starting with Article 1601 –

ARTICLE 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon.³⁴ (1507)

Article 1616 of the Civil Code enumerates the monetary obligations of the vendor to the vendee whenever the former exercises his or her right of repurchase –

ARTICLE 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

- (1) The expenses of the contract, and any other legitimate payments made by reason of the sale;
- (2) The necessary and useful expenses made on the thing sold. (1518)

But the law **does not look kindly** on transactions that are claimed to be a sale with the right of repurchase. As reiterated in *Ching Sen Ben v. Court of Appeals*:³⁵

Art. 1603 of the Code provides that, in case of doubt, a contract purporting to be a sale with right to repurchase should be considered an equitable mortgage. The policy of the law is to discourage *pacto de retro* sales and thereby prevent the circumvention of the prohibition against usury and *pactum commissorium*. This Court has taken judicial notice of the fact that *pacto de retro* sales have been frequently used to conceal contracts of loan secured by a mortgage. The provisions of the Civil Code, which consider certain types of sales as equitable mortgages, are intended for the protection of those who are the unlettered and who are penurious vis-a-vis their creditors.³⁶

Collectively, when a party to a *pacto de retro* sale complains, the provisions of the Civil Code on *pacto de retro* sales **require** the courts to **closely scrutinize** the transaction, and if certain facets of the sale correspond

³² See *Heirs of Jarque v. Jarque*, 843 Phil. 604 (2018).

³³ See *Spouses Lumayag v. Heirs of Nemeño*, 553 Phil. 293–306 (2007).

³⁴ Civil Code of the Philippines, Republic Act No. 386, Approved on June 18, 1949.

³⁵ 373 Phil. 544–555 (1999).

³⁶ *Id.* at 552.

with the factors mentioned in Article 1602,³⁷ to consider it an equitable mortgage. The law's intention is to protect those who are vulnerable due to circumstances such as poverty, penury, and lack of education from being taken advantage of by creditors.³⁸ Their vulnerabilities invariably find themselves in no position whatsoever to bargain fairly with their lenders.³⁹

An equitable mortgage masquerading as a sale with *pacto de retro* is a contract which, though lacking the formality, form, or words, or other requisites demanded by the statute, reveals the intention of the parties to burden a piece or pieces of real property **only to secure the payment of a debt.**⁴⁰ It has two (2) requisites:

- (1) the parties enter into what appears to be a contract of sale; but
- (2) their intention is to secure an existing debt by way of a mortgage.⁴¹

Here, though petitioner and respondent memorialized their transaction as a *Deed of Sale Under Pacto De Retro*, their intent was **not to sell** the land with right of repurchase, but simply to set it up as a security for petitioner's debt of ₱32,000.00.

As directed by the verbal phrase "**shall be presumed,**" the Court is required by Article 1602 of the Civil Code to **presume conclusively** a contract to be an **equitable mortgage** if any of these circumstances is present –

ARTICLE 1602. The contract **shall be presumed** to be an equitable mortgage, in any of the following cases:

- (1) When the price of a sale with right to repurchase is unusually inadequate;
- (2) **When the vendor remains in possession as lessee or otherwise;**

³⁷ Article 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:
(1) When the price of a sale with right to repurchase is unusually inadequate;
(2) When the vendor remains in possession as lessee or otherwise;
(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
(4) When the purchaser retains for himself a part of the purchase price;
(5) When the vendor binds himself to pay the taxes on the thing sold;
(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

³⁸ Supra note 35.

³⁹ See *Matanguihan v. Court of Appeals*, 341 Phil. 379, 390 (1997).

⁴⁰ See *Ramos v. Sarao*, 491 Phil. 288, 301 (2005).

⁴¹ Id. at 293–300.

- (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
- (4) When the purchaser retains for himself a part of the purchase price;
- (5) **When the vendor binds himself to pay the taxes on the thing sold;**
- (6) **In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.**

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. (n)⁴²

The presence of any of these circumstances is enough for the presumption to arise. No concurrence or an overwhelming number is necessary.⁴³

The Civil Code further states that Article 1602 shall also apply to a contract purporting to be an absolute sale,⁴⁴ and as quoted above, in case of doubt, a contract purporting to be a sale with right to repurchase **shall be construed** as an equitable mortgage.⁴⁵ The **command** to the courts is clear from the **imperative** tone of the legislation. The reason is palpable – the policy of the law is to discourage *pacto de retro* sales.⁴⁶ Article 1602 was designed primarily to curtail the evils brought about by contracts of sale with right of repurchase, such as the circumvention of the usury law and *pactum commissorium*. It particularly envisions contracts of sale with right of repurchase where the real intention of the parties is that the pretended purchase price is actually a loan, and in order to secure its payment, a contract purporting to be a sale with *pacto de retro* is drawn up.⁴⁷

Here, the following circumstances bear the **conclusive earmarks** of an equitable mortgage:

One. Petitioner and respondent evidently intended to use the land merely as security for his loan of ₱32,000.00;

⁴² Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

⁴³ See *Spouses Solitarios v. Spouses Jaque*, 746 Phil. 852, 867 (2014).

⁴⁴ Article 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale. (n) (Civil Code of the Philippines, Republic Act No. 386, Approved on June 18, 1949).

⁴⁵ Supra note 33 at 304.

⁴⁶ Supra note 35 at 552.

⁴⁷ See *Santos v. Duata*, 122 Phil. 379, 384 (1965).

10

Two. Petitioner remained in possession of the land even after the execution of the contract and continued to pay realty taxes thereon; and

Three. The contract contained a *pactum commissorium* provision.

We elucidate.

***The property was charged
as security for the loan.***

A contract denominated as a *pacto de retro* sale should be construed as a mortgage when its terms are ambiguous or the circumstances surrounding its execution or its performance are incompatible or inconsistent with a sale.⁴⁸ And even though a contract is denominated a *pacto de retro* sale, the owner of the property may prove that it is otherwise by showing, through parol evidence, the real intent of the parties.⁴⁹

This is especially true when, as in this case, the nature of the document in question was **squarely put in issue**.⁵⁰ In such a case, parol evidence is competent and admissible to prove that the contract does not express the true intention of the parties and that the property was given merely as security for the payment of the loan.⁵¹ Upon proof of the truth of such allegations, the court will enforce the agreement or understanding in consonance with the true intent of the parties at the time of the execution of the contract.⁵²

Since one party, the alleged vendee would claim the transaction to be a *pacto de retro* sale, while the other, the alleged vendor, would counter that the transaction was a loan secured by the purported object of the sale, the issue boils down to **credibility**.

Here, we rule that the **probable truth** was that petitioner, then in dire need of cash, was introduced to respondent, a **known money lender** in the community. But she refused to lend money to him until he would have posted a security. He was thus constrained to surrender to her the land's Tax Declaration No. 99-04019-00903 only for this purpose. Under these circumstances, they then proceeded to execute the document *Deed of Sale Under Pacto de Retro*. Petitioner testified:

⁴⁸ See *Lapat v. Rosario*, G.R. No. 127348, 371 Phil. 456-468 (1999).

⁴⁹ Supra note 35.

⁵⁰ See *Gerardino, Sr. v. Court of First Instance (Br. III), Capiz*, 170 Phil. 668, 675 (1977).

⁵¹ See *Spouses Misena v. Rongavilla*, 363 Phil. 361, 366 (1999).

⁵² Supra note 39.

- Q: Can you tell us what happened on June 4, 2001?
A: That was the day when I obtained credit, [S]ir.
- Q: From whom?
A: From Mrs. Auticio.
- Q: Did Mrs. Auticio give you the amount which you asked from her on that day?
A: Not yet, on the following day, [S]ir.
- Q: Why were you not given the amount which you are asking from her on that day, June 4, 2001.
A: My papers [were] not yet complete [S]ir.
- Q: And what were those papers that she was asking from you?
A: Collateral, [S]ir.
- Q: And what did you do when she was asking for a collateral?
A: I produced the document.
- Q: What kind of document were you able to produce?
A: The tax declaration, [S]ir.
- Q: And whose tax declaration was that?
A: In my name.
- Q: And upon producing that tax declaration in your name, what did you do next?
A: I gave the tax declaration, and that was the time she released the money.
- Q: There is a document here which is denominated as Deed of Sale under *Pacto de Retro* wherein you appeared[,] Froilan Dala[,] as the vendor and Editha Auticio as the vendee, signed in the presence of Hermana Dala and Ben Panaguiton, Jr., what is this all about?
A: That is my document, [S]ir.⁵³

x x x x

- Q: And how much were you able to [obtain] from Mrs. Auticio as a loan?
A: ₱20,000.00
- Q: And how is it that the amount appears to be ₱32,000.00?
A: It includes the interest, [S]ir.⁵⁴

x x x x

- Q: When you said that you executed this Deed of Sale under *Pacto de Retro* of your own initiative also, what was the main intention in executing this Deed of Sale under *Pacto de Retro*?

⁵³ TSN dated October 10, 2007, pp. 3-5.

⁵⁴ Id. at 6.

A: What I understand is only a collateral.⁵⁵ (Emphases supplied)

Petitioner's sister Hermana introduced him to respondent. His sister also signed the contract as a witness. She shared the same impression and understanding that the land was to serve only as collateral for the loan:

Q: Do you know the petitioner in this case?

A: Yes[,] Sir.

Q: And what do you know about her?

A: She lends money with certain percentage.

Q: Aside from lending money with some percentage, is there any other thing that you know about her?

A: Yes, what she needs in lending her money is a collateral like land.

Q: Do you know the person who answers the name Froilan Dala?

A: Yes[,] Sir.

Q: What do you know about him?

A: He is my brother[,] Sir.

Q: Alright, I am showing to you a document, a document of [*P*]acto De Retro, there is a name appearing as one of the witness[es] in the name of Hermana Apelado, how are you related to this name?

A: I am the one[,] Sir.

x x x x

Q: Was there any conversation that took place before you affix[ed] your signature in this document, conversation between Editha Auticio, you[,] and Froilan Dala?

A: There was[,] Sir.

Q: And tell the Honorable Court[,] what was the conversation that took place between you, Froilan Dala[,] and Editha Auticio?

A: What we had agreed that the land would be the collateral of the 10% credit.

Q: When you say land, are you referring to the land stated under the [*P*]acto De Retro?

A: That is the one[,] Sir.⁵⁶

Notably, respondent **did not refute** the testimonies of petitioner and his sister about her (respondent's) business as a **known money lender**. Respondent's reputation as such makes it **more likely than not** that she took

⁵⁵ Id. at 13.

⁵⁶ TSN dated December 3, 2007, pp. 3-4.

the land **not** as an object of sale with right of repurchase, but as a **security for what she had been known to provide – loans**. From this fact, we also derive the **probable** inference that petitioner's sister introduced him to respondent for **no other reason than to obtain a loan**.

His sister also attested that **he was in dire straits**. This testimony is **probably true** because he would **not** have accepted in the year 2001 only ₱32,000.00 for a 1,378 square meter parcel of coconut land. There is **no** evidence to **refute** that this amount of ₱32,000.00 was **not** the fair market value of this expanse of realty or to **confirm** that it was a **fair** amount for a land of this quality and quantity. From these facts, we can reasonably and **probably** conclude **petitioner's vulnerability** in signing the document though it catalogued their transaction as a *pacto de retro* sale instead of a loan.

In *Bellido v. Court of Appeals*,⁵⁷ the Court held that being **financially distressed** at the time of the transaction is a strong indicator of an equitable mortgage transaction than of a sale with right of repurchase. Also, in *Go v. Bacaron*,⁵⁸ the Court found that the parties actually intended an equitable mortgage as shown by the fact that **the seller was driven to obtain the loan** at a time when he was in urgent need of money and that he signed the Deed of Sale, despite knowing that it did not express their real intention.

So must it be.

Petitioner remained in possession of the property even after the execution of the contract.

In a **sale with right to repurchase**, title and ownership of the property sold are **immediately vested** in the vendee subject to the vendor's right to repurchase within the stipulated period.⁵⁹ Where the vendor, however, remains in physical possession of the land, for **no explicable** reason, this fact is an *indicium* of an equitable mortgage.⁶⁰

Here, petitioner remained in possession of the land long after the stipulated redemption period:

Q: Who is in possession of the property?

A: Since year 2003 or 2004[,] they were the one[s] who possessed the land, [S]ir.

⁵⁷ 298-A Phil. 677, 678 (1993).

⁵⁸ 509 Phil. 323, 337 (2005).

⁵⁹ See *David v. David*, 724 Phil. 239, 241 (2014).

⁶⁰ *Supra* note 43 at 868.

- Q: Until today?
A: Yes, [S]ir.
- Q: How about from 2001 to 2003[,] who was in possession of the property?
A: We were the one[s], [S]ir.
- Q: Was there an agreement between you and Mrs. Auticio that in the meantime[,] you will possess the property from 2001 to 2003?
A: None, [S]ir.
- Q: And Mrs. Auticio kn[e]w very well that from 2001 to 2003 that you [were] the one in possession of the property?
A: Yes, [S]ir.
- Q: **And from 2001 to 2003[,] who paid the taxes thereon?**
A: **We were the one[s], [S]ir.**⁶¹

According to respondent, she asserted her alleged right of possession not immediately after the sale **but only after** the property was transferred to her name:

- Q: Who is now in possession of the property?
A: I am the one.
- Q: When did you start possession of the property?
A: After the transfer of the land in my name.
- Q: What was your basis in possessing the property?
A: It was already transferred.
- Q: What was transferred?
A: Tax Declaration.
- Q: Can you recall when was that tax declaration transferred to you?
A: May 16, 2003.⁶²

In other words, petitioner remained in actual physical possession of the property for at least seventeen (17) more months since the execution of the Deed, without any showing that he had arranged with respondent for maintenance expenses or rental payments.⁶³ This continuous and uninterrupted possession by petitioner indicates lack of interest in the land for purposes of the vesture of ownership upon respondent under a truthful contract of sale.⁶⁴ His possession also erodes her claim of title, as this fact constitutes a badge of equitable mortgage.⁶⁵

⁶¹ TSN dated October 10, 2007, pp. 6-7.

⁶² TSN dated February 13, 2007, p. 3.

⁶³ Supra note 39 at 392.

⁶⁴ Supra note 43 at 868.

⁶⁵ Supra note 39 at 391.

Notably, too, petitioner continued paying the realty taxes on the property until the tax declaration was transferred to respondent's name. Payment of taxes is a usual burden attached to ownership – they who own pay the realty taxes; those who do not, sit and relax undisturbed by this incident of governance. But more than that, it proves respondent's lack of ownership of the land at the moment of sale *pacto de retro*.⁶⁶

Spouses Lumayag v. Heirs of Nemeño is *apropos*.⁶⁷ In that case, the Court found that the parties intended an equitable mortgage instead of a *pacto de retro* sale since the respondent heirs, as vendors *a retro*, **remained in possession** of the subject lots after the execution of the deed of sale with right to repurchase. The Court held that where the vendor remains in physical possession of the land, especially when there is no reason for the alleged vendor's continuous possession, the contract should be treated as an equitable mortgage.

The same rule applies to the present case.

The provision on pactum commissorium negates the alleged sale of the property.

In *pactum commissorium*, the ownership of the security will pass to the creditor by the **mere default** in payment of the loan by the debtor. The Court has invariably declared that **this kind of arrangement is void for being contrary to morals and public policy**.⁶⁸ Article 2088 of the Civil Code is clear –

ARTICLE 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.⁶⁹

Pactum commissorium requires the following elements:

(1) There should be a property mortgaged by way of security for the payment of the principal obligation; and

(2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.⁷⁰

⁶⁶ Supra note 58 at 332.

⁶⁷ Supra note 33 at 305.

⁶⁸ Supra note 43 at 877.

⁶⁹ Civil Code of the Philippines, Republic Act No. 386, Approved on June 18, 1949.

⁷⁰ See *Garcia v. Villar*, 689 Phil. 363, 374 (2012).

Here, when petitioner and respondent stipulated in their Deed that “if the *VENDOR* shall fail to exercise his right to repurchase as herein granted within the period stipulated, then this conveyance shall become absolute and irrevocable, without the necessity of drawing up a new deed of absolute sale, subject to the requirement of the law regarding consolidation of ownership x x x”⁷¹ they evidently entered into a *pactum commissorium* arrangement which enables the mortgagee to acquire ownership of the mortgaged property without the need of foreclosure proceedings.

This stipulation violates Article 2088 of the Civil Code, hence, it is void.⁷² It contradicts the nature of a true *pacto de retro sale*, under which a vendee acquires ownership of the thing sold immediately upon execution of the sale, subject only to the vendor’s right of redemption.

In *Spouses Lumayag*,⁷³ the parties stipulated – “if we fail to exercise our rights to repurchase as herein granted within the period stipulated, then this conveyance shall become absolute and irrevocable **without the necessity of drawing a new absolute Deed of Sale, subject to the requirements of law regarding consolidation of ownership of real property.**”⁷⁴ The Court considered this promise as *pactum commissorium* since, as in the case at bar, it is contrary to the nature of a true *pacto de retro* sale where, by law, ownership of the property sold is immediately transferred to the vendee *a retro* upon execution of the sale, subject only to the repurchase of a vendor *a retro* within the stipulated period.

In sum, the Court finds and so rules that the purported contract of sale with *pacto de retro* executed by the parties is, in reality, an equitable mortgage. This conclusion aligns with the rule in Article 1603 of the Civil Code, that in case of doubt, the law favors the least transmission of rights and interest over a property subject of the parties’ conflicting claims. The purpose of the law is to prevent circumvention of the law on usury and the prohibition against a creditor appropriating the mortgaged property. It is aimed to end unjust or oppressive transactions or violations in connection with a sale of property.⁷⁵ In times of grave financial distress which render persons hard-pressed to meet even their basic needs or answer an emergency, they really have no choice but to sign a deed of absolute sale of property, or a sale thereof with *pacto de retro*, if only to obtain a much-needed respite through a loan from money lenders.⁷⁶

⁷¹ Records, RTC Case No. 3736, p. 6.

⁷² See *In re: Vda. de Reyes v. De Leon*, 126 Phil. 710, 719 (1967).

⁷³ *Supra* note 33.

⁷⁴ *Id.* at 306.

⁷⁵ *Supra* note 51 at 367.

⁷⁶ *Supra* note 39.

Awards

Since the purported *pacto de retro* sale is in fact an equitable mortgage, it renders **void the transfer of the property** to respondent through *pactum commissorium*. The Municipal Assessor of Borongan, Eastern Samar should be directed to cancel the tax declaration over the property issued in the name of respondent. Further, petitioner is entitled to redeem the property subject of course to the full settlement of the mortgage obligation to respondent.

It does not escape us that despite petitioner's offer to pay, no actual payment, let alone, consignment of the amount loaned was ever made. Petitioner has the obligation to pay respondent the amount of ₱32,000.000 with twelve percent (12%) *per annum* pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*⁷⁷ from June 4, 2001 until June 30, 2013. Thereafter, the legal interest rate is reduced to six percent (6%) *per annum* from July 1, 2013 until finality of this decision pursuant to *Nacar v. Gallery Frames*.⁷⁸

All monetary awards shall earn six percent (6%) legal interest *per annum* from finality of this decision until full payment.⁷⁹

ACCORDINGLY, the petition is **GRANTED**. The **Decision** and **Resolution** dated August 29, 2012 and December 19, 2012, respectively, of the Court of Appeals in CA-G.R. CEB-CV No. 02713 are **REVERSED and SET ASIDE**.

The Municipal Assessor of Borongan, Eastern Samar is **DIRECTED** to **CANCEL** the tax declaration over the property issued in the name of respondent. Further, petitioner is entitled to **REDEEM** the subject property by **FULL PAYMENT** of the mortgage obligation plus twelve percent (12%) legal interest *per annum* from June 4, 2001 until June 30, 2013. Thereafter, the legal interest rate is reduced to six percent (6%) *per annum* from July 1, 2013 until finality of this **Decision**. The total monetary awards shall then earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.⁸⁰

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

⁷⁷ 304 Phil. 236, 254 (1994).

⁷⁸ 716 Phil. 267, 283 (2013).

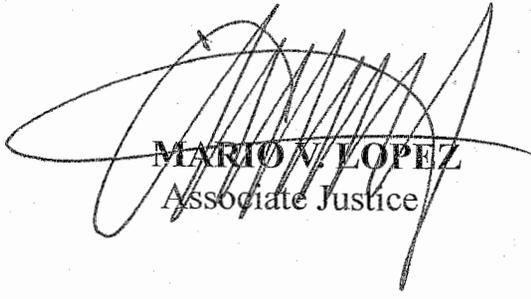
⁷⁹ See *Go-Bangayan v. Spouses Ho*, G.R. No. 203020, June 28, 2021.

⁸⁰ *Id.*

WE CONCUR:



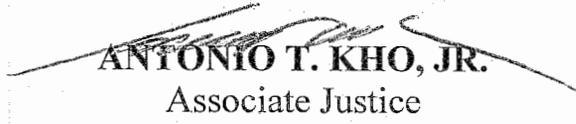
MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson



MARIO N. LOPEZ
Associate Justice



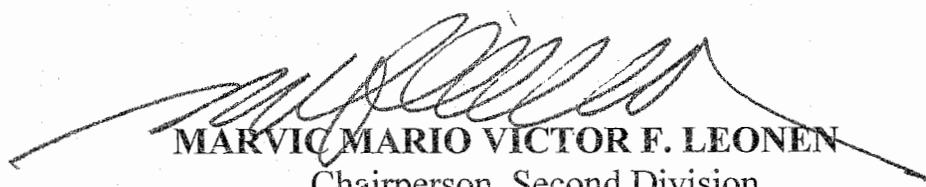
JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

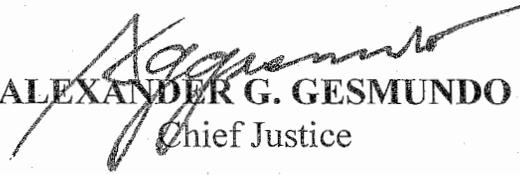


MARVIC MARIO VICTOR F. LEONEN
Chairperson, Second Division



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice