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dated June 26, 2002 promulgated by the Court of Appeals in CA-G.R. SP No. 67551.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 158377. August 4, 2010]

HEIRS OF JOSE REYES, JR., namely: MAGDALENA C. REYES, OSCAR C. REYES, GAMALIEL C. REYES, NENITA R. DELA CRUZ, RODOLFO C. REYES, and RODRIGO C. REYES, *petitioners, vs.* **AMANDA S. REYES, CONSOLACION S. REYES, EUGENIA R. ELVAMBUENA, LUCINA R. MENDOZA, PEDRITO S. REYES, MERLINDA R. FAMODULAN, EDUARDO S. REYES, and JUNE S. REYES,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; EQUITABLE MORTGAGE; BADGES THEREOF, PRESENT. — The CA correctly concluded that the true agreement of the parties *vis-à-vis* the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage, not a *pacto de retro* sale. There was no dispute that the purported vendors had continued in the possession of the property even after the execution of the agreement; and that the property had remained declared for taxation purposes under Leoncia's name, with the realty taxes due being paid by Leoncia, despite the execution of the agreement. Such established circumstances are among the badges of an equitable mortgage enumerated

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[*] Additional member per Special Order No. 843 dated May 17, 2010.

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in Article 1602, paragraphs 2 and 5 of the *Civil Code*. x x x The existence of any one of the conditions enumerated under Article 1602 of the *Civil Code*, not a concurrence of all or of a majority thereof, suffices to give rise to the presumption that the contract is an equitable mortgage. Consequently, the contract between the vendors and vendees (Spouses Francia) was an equitable mortgage.

2. ID.; ID.; ID.; THE ACCEPTANCE OF THE PAYMENTS EVEN BEYOND THE 10-YEAR PERIOD OF REDEMPTION ESTOPPED THE MORTGAGEES' HEIRS FROM INSISTING THAT THE PERIOD TO REDEEM THE PROPERTY HAD ALREADY EXPIRED. — Considering that *sa oras na sila'y makinabang*, the period of redemption stated in the *Kasulatan ng Biling Mabibiling Muli*, signified that no definite period had been stated, the period to redeem should be ten years from the execution of the contract, pursuant to Articles 1142 and 1144 of the *Civil Code*. Thus, the full redemption price should have been paid by July 9, 1955; and upon the expiration of said 10-year period, mortgagees Spouses Francia or their heirs *should have* foreclosed the mortgage, but they did not do so. Instead, they accepted Alejandro's payments, until the debt was fully satisfied by August 11, 1970. The acceptance of the payments even beyond the 10-year period of redemption estopped the mortgagees' heirs from insisting that the period to redeem the property had already expired. Their actions impliedly recognized the continued existence of the equitable mortgage. The conduct of the original parties as well as of their successors-in-interest manifested that the parties to the *Kasulatan ng Biling Mabibiling Muli* really intended their transaction to be an equitable mortgage, not a *pacto de retro* sale.

3. ID.; ID.; ID.; AN ASSIGNEE OF THE MORTGAGE AND THE MORTGAGE CREDIT ACQUIRED ONLY THE RIGHTS OF HIS ASSIGNOR. — When Alejandro redeemed the property on August 11, 1970, he did not thereby become a co-owner thereof, because his father Jose, Sr. was then still alive. Alejandro merely became the assignee of the mortgage, and the property continued to be co-owned by Leoncia and her sons Jose, Sr., Jose Jr., and Teofilo. As an assignee of the mortgage and the mortgage credit, Alejandro acquired only the rights of his assignors, nothing more. He himself confirmed

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so in the *Magkasanib na Salaysay,* whereby he acknowledged the co-owners' right to redeem the property from him at any time (*sa ano mang oras*) for the same redemption price of ₱500.00.

4. ID.; ID.; ID.; ID.; AN ASSIGNEE OF THE MORTGAGE OR HIS HEIRS CANNOT APPROPRIATE THE MORTGAGED PROPERTY. — The *Kasulatan ng Pagmemeari* executed by Alejandro on August 21, 1970 was ineffectual to predicate the exclusion of the petitioners and their predecessors in interest from insisting on their claim to the property. Alejandro's being an assignee of the mortgage did not authorize him or his heirs to appropriate the mortgaged property for himself without violating the prohibition against *pactum commissorium* contained in Article 2088 of the *Civil Code,* to the effect that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them[;] [a]ny stipulation to the contrary is null and void."

5. ID.; ID.; ID.; RATIONALE BEHIND THE RULE CONCERNING THE EXTENSION OF THE PERIOD OF REDEMPTION, EXPLAINED. — The provisions of the *Civil Code* governing equitable mortgages disguised as sale contracts, like the one herein, are primarily designed to curtail the evils brought about by contracts of sale with right to repurchase, particularly the circumvention of the usury law and *pactum commissorium.* Courts have taken judicial notice of the well-known fact that contracts of sale with right to repurchase have been frequently resorted to in order to conceal the true nature of a contract, *that is,* a loan secured by a mortgage. It is a reality that grave financial distress renders persons hard-pressed to meet even their basic needs or to respond to an emergency, leaving no choice to them but to sign deeds of absolute sale of property or deeds of sale with *pacto de retro* if only to obtain the much-needed loan from unscrupulous money lenders. This reality precisely explains why the pertinent provision of the *Civil Code* includes a peculiar rule concerning the period of redemption, to wit: Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: x x x (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;** x x x Ostensibly, the law allows a *new* period of redemption to be

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agreed upon or granted even after the expiration of the equitable mortgagor's right to repurchase, and treats such extension as one of the indicators that the true agreement between the parties is an equitable mortgage, not a sale with right to repurchase. It was indubitable, therefore, that the *Magkasanib na Salaysay* effectively afforded to Leoncia, Teofilo, Jose, Sr. and Jose, Jr. a fresh period within which to pay to Alejandro the redemption price of ₱500.00.

6. ID.; PROPERTY; CO-OWNERSHIP; ELEMENTS THAT MUST CONCUR BEFORE A CO-OWNER'S POSSESSION MAY BE DEEMED ADVERSE TO THE *CESTI QUE TRUST* OR THE OTHER CO-OWNERS. — In order that a co-owner's possession may be deemed adverse to that of the *cestui que trust* or the other co-owners, the following elements must concur: 1. The co-owner has performed unequivocal acts of repudiation of the co-ownership amounting to an ouster of the *cestui que trust* or the other co-owners; 2. Such positive acts of repudiation have been made known to the *cestui que trust* or the other co-owners; 3. The evidence on the repudiation is clear and conclusive; and 4. His possession is open, continuous, exclusive, and notorious.

7. ID.; ID.; ID.; ID.; ELEMENTS, NOT ESTABLISHED IN CASE AT BAR. — The concurrence of the foregoing elements was not established herein. For one, Alejandro did not have adverse and exclusive possession of the property, as, in fact, the other co-owners had continued to possess it, with Alejandro and his heirs occupying only a portion of it. Neither did the cancellation of the previous tax declarations in the name of Leoncia, the previous co-owner, and the issuance of a new one in Alejandro's name, and Alejandro's payment of the realty taxes constitute repudiation of the co-ownership. The sole fact of a co-owner declaring the land in question in his name for taxation purposes and paying the land taxes did not constitute an unequivocal act of repudiation amounting to an ouster of the other co-owner and could not constitute adverse possession as basis for title by prescription. Moreover, according to *Blatero v. Intermediate Appellate Court*, if a sale *a retro* is construed as an equitable mortgage, then the execution of an affidavit of consolidation by the purported buyer to consolidate ownership of the parcel of land is of no consequence and the "constructive possession" of the parcel of land will not ripen into ownership, because

only possession acquired and enjoyed *in the concept of owner* can serve as title for acquiring dominion. In fine, the respondents did not present proof showing that Alejandro had effectively repudiated the co-ownership. Their bare claim that Alejandro had made oral demands to vacate to his co-owners was self-serving and insufficient. Alejandro's execution of the affidavit of consolidation of ownership on August 21, 1970 and his subsequent execution on October 17, 1970 of the joint affidavit were really equivocal and ambivalent acts that did not manifest his desire to repudiate the co-ownership. The only unequivocal act of repudiation was done by the respondents when they filed the instant action for quieting of title on September 28, 1994, nearly a year after Alejandro's death on September 2, 1993. However, their possession could not ripen into ownership considering that their act of repudiation was not coupled with their *exclusive* possession of the property.

APPEARANCES OF COUNSEL

Mark C. Arcilla for petitioners.
Luzviminda M. Mapalad for respondents.

D E C I S I O N

BERSAMIN, *J.:*

The petitioners[1] assail the decision dated July 31, 2002 rendered in C.A.-G.R. CV No. 53039,[2] by which the Court of Appeals

[1] The petitioners were collectively denominated in the caption of the petition as *Heirs of Jose Reyes, Jr., et al., represented by Rodrigo C. Reyes*. On August 11, 2003, the Court required Rodrigo C. Reyes to submit his authority to represent the heirs of Jose Reyes, Jr. within 15 days from notice (*rollo*, p. 65). Rodrigo C. Reyes submitted his compliance on September 24, 2003, enclosing the original of the special power of attorney executed on January 28, 1995 naming Magdalena C. Reyes, Oscar C. Reyes, Gamaliel C. Reyes, Nenita R. Dela Cruz, Rodolfo C. Reyes and Rodrigo C. Reyes as the heirs of Jose Reyes, Jr. (*id.*, pp. 68-69).

[2] *Rollo*, pp.18-33; penned by Associate Justice Romeo J. Callejo, Sr. (later a Member of the Court, since retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Danilo B. Pine (retired) concurring.

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(CA) affirmed the decision dated May 21, 1996 of the Regional Trial Court (RTC), Branch 9, in Malolos, Bulacan.[3]

Antecedents

Antonio Reyes and his wife, Leoncia Mag-isa Reyes (Leoncia), were owners of a parcel of residential land with an area of 442 square meters, more or less, located in Pulilan, Bulacan and covered by Tax Declaration No. 7590. On that land they constructed their dwelling. The couple had four children, namely: Jose Reyes, Sr. (Jose, Sr.), Teofilo Reyes (Teofilo), Jose Reyes, Jr. (Jose, Jr.) and Potenciana Reyes-Valenzuela (Potenciana). Antonio Reyes died intestate, and was survived by Leoncia and their three sons, Potenciana having predeceased her father. Potenciana also died intestate, survived by her children, namely: Gloria ReyesValenzuela, Maria Reyes Valenzuela, and Alfredo Reyes Valenzuela. Jose, Jr., and his family resided in the house of the parents, but Teofilo constructed on the property his own house, where he and his family resided.

On July 9, 1955, Leoncia and her three sons executed a deed denominated *Kasulatan ng Biling Mabibiling Muli*,[4] whereby they sold the land and its existing improvements to the Spouses Benedicto Francia and Monica Ajoco (Spouses Francia) for ₱500.00, subject to the vendors' right to repurchase for the same amount *sa oras na sila'y makinabang*. Potenciana's heirs did not assent to that deed. Nonetheless, Teofilo and Jose, Jr. and their respective families remained in possession of the property and paid the realty taxes thereon.

Leoncia and her children did not repay the amount of ₱500.00.

The Spouses Francia both died intestate (*i.e.*, Monica Ajoco on September 16, 1963, and Benedicto Francia on January 13, 1964).

Alejandro Reyes (Alejandro), the son of Jose, Sr., first partially paid to the Spouses Francia the amount of ₱265.00 for the

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[3] *Id.*, pp. 54-64.

[4] Records, p. 128 (translated: *Deed of Sale with Right to Repurchase*).

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obligation of Leoncia, his uncles and his father. Alejandro later paid the balance of ₱235.00. Thus, on August 11, 1970, the heirs of Spouses Francia executed a deed entitled *Pagsasa-ayos ng Pag-aari at Pagsasalin,*[5] whereby they transferred and conveyed to Alejandro all their rights and interests in the property for ₱500.00.

On August 21, 1970, Alejandro executed a *Kasulatan ng Pagmeme-ari*,[6] wherein he declared that he had acquired all the rights and interests of the heirs of the Spouses Francia, including the ownership of the property, after the vendors had failed to repurchase within the given period. On the basis of the *Kasulatan ng Pagmeme-ari,* Tax Declaration No. 3703 covering the property[7] was canceled by Tax Declaration No. 8715,[8] effective 1971, issued to Alejandro. From then on, he had paid the realty taxes for the property.

Nevertheless, on October 17, 1970, Alejandro, his grandmother (Leoncia), and his father (Jose, Sr.) executed a *Magkakalakip na Salaysay*,[9] by which Alejandro acknowledged the right of Leoncia, Jose, Jr., and Jose, Sr. to repurchase the property at any time for the same amount of ₱500.00.

On October 22, 1970, Leoncia died intestate.[10] She was survived by Jose, Sr., Teofilo, Jose, Jr. and the heirs of Potenciana. Even after Leoncia's death, Teofilo and Jose, Jr., with their respective families, continued to reside in the property.

Subsequently, Tax Declaration 1228,[11] under the name of Alejandro, was issued effective 1980. All of Leoncia's sons eventually died intestate, survived by their respective heirs, namely:

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[5] *Id.,* pp. 9-10 (Translated: *Settlement of Estate and Assignment*).

[6] *Id.,* p. 11 (Translated: *Deed of Ownership*).

[7] *Id.,* p. 185.

[8] *Id.,* pp. 186-187.

[9] *Id.,* p. 130 (Translated: *Joint Affidavit*).

[10] *Id.,* p. 156.

[11] *Id.,* p. 132.

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Name of Decedent	Surviving Heirs
Teofilo	Romeo Reyes, Leonardo Reyes, and Leonora C. Reyes
Jose, Jr.	Rodrigo Reyes, Nenita Reyes-dela Cruz, Rodolfo Reyes, Oscar Reyes, Gamaliel Reyes, Magdalena Reyes (petitioners herein), Efren Reyes and Amado Reyes dela Cruz
Jose, Sr.	Alejandro Reyes (respondents' predecessor)[12]

On September 2, 1993, Alejandro also died intestate.[13] Surviving him were his wife, Amanda Reyes, and their children, namely: Consolacion Reyes, Eugenia Reyes-Elvambuena, Luciana Reyes-Mendoza, Pedrito S. Reyes, Merlinda Reyes-Famodulan, Eduardo Reyes and June S. Reyes (respondents herein).

In 1994, respondent Amanda Reyes asked the heirs of Teofilo and Jose, Jr., to vacate the property because she and her children already needed it. After the petitioners refused to comply, she filed a complaint against the petitioners in the *barangay*, seeking their eviction from the property. When no amicable settlement was reached, the Barangay Lupon issued a *certification to file action* to the respondents on September 26, 1994.[14]

In the interim, petitioner Nenita R. de la Cruz and her brother Romeo Reyes also constructed their respective houses on the property.[15]

RTC Proceedings and Ruling

On September 28, 1994, the respondents initiated this suit for quieting of title and reconveyance in the RTC.[16] The complaint,

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[12] *Rollo*, p. 20.

[13] Records, p. 155.

[14] *Id.*, p. 152.

[15] *Id.*, pp. 157-159 (Exhibits N to N-5).

[16] *Id.*, pp. 1-5.

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docketed as Civil Case No. 817-M-94 and entitled *Amanda Reyes, et al. v. Heirs of Jose Reyes, Jr., et al.*, was later amended.[17] They alleged that their predecessor Alejandro had acquired ownership of the property by virtue of the deed *Pagsasa-ayos ng Pag-aari at Pagsasalin* executed on August 11, 1970 by the heirs of the Spouses Francia; that on the basis of such deed of assignment, Alejandro had consolidated his ownership of the property *via* his *Kasulatan ng Pagmeme-ari;* and that under the *Magkasanib na Salaysay,* Alejandro had granted to Leoncia, his father Jose, Sr., and his uncles, Teofilo and Jose, Jr. the right to repurchase the property, but they had failed to do so.

The respondents prayed for judgment in their favor, as follows:

WHEREFORE, it is respectfully prayed that judgment be rendered:

1. Quieting the title to the property by declaring the plaintiffs (*respondents herein)* as the rightful and lawful owners thereof;

2. Ordering the defendants (*petitioners herein)* to vacate subject premises and reconvey and or surrender possession thereof to the plaintiffs;

3. Ordering the defendants to recognize the right of the plaintiffs as the lawful owners of subject property;

4. Ordering the defendants to pay plaintiffs the following:

   a. Moral damages in the amount of ₱50,000.00;

   b. Exemplary damages in the amount of ₱20,000.00;

   c. Attorney's fees of ₱20,000.00, acceptance fee of ₱10,000.00 and ₱500.00 per recorded Court appearance of counsel;

   d. The costs of this suit.

Plaintiffs further pray for such other relief which the Honorable Court may deem just and equitable under the premises.[18]

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[17] *Id.,* pp. 83-90.

[18] *Id.,* p. 89.

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In their answer,[19] the petitioners averred that the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage, not a *pacto de retro* sale; that the mortgagors had retained ownership of the property; that the heirs of the Spouses Francia could not have validly sold the property to Alejandro through the *Pagsasaayos ng Pag-aari at Pagsasalin;* that Alejandro's right was only to seek reimbursement of the ₱500.00 he had paid from the co-owners, namely: Leoncia, Teofilo, Jose, Jr. and Jose, Sr. and the heirs of Potenciana; and that Alejandro could not have also validly consolidated ownership through the *Kasulatan ng Pagmeme-ari,* because a consolidation of ownership could only be effected *via* a court order.

The petitioners interposed a counterclaim for the declaration of the transaction as an equitable mortgage, and of their property as owned in common by all the heirs of Leoncia, Teofilo, Jose, Jr. and Jose, Sr.

On May 21, 1996, the RTC ruled in favor of the respondents, declaring that Alejandro had acquired ownership of the property in 1965 by operation of law upon the failure of the petitioners' predecessors to repurchase the property; that the joint affidavit executed by Alejandro, Leoncia and Jose, Jr. and Jose, Sr., to extend the period of redemption was inefficacious, because there was no more period to extend due to the redemption period having long lapsed by the time of its execution; and that the action should be dismissed insofar as the heirs of Potenciana were concerned, considering that Potenciana, who had predeceased her parents, had no successional rights in the property.

Accordingly, the RTC decreed as follows:

WHEREFORE, on the basis of the evidence adduced and the law/ jurisprudence applicable thereon, judgment is hereby rendered:

a) sustaining the validity of the "*Kasulatan ng Biling Mabibiling Muli"* (Exh. B/Exh. 1) executed on July 9, 1955 by Leoncia Magisa and her sons Teofilo, Jose, Sr. and Jose, Jr., all surnamed Reyes, in favor of Spouses Benedicto Francia and Monica Ajoco as well as

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[19] *Id.,* pp. 34-41.

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the *"Pagsasa-ayos ng Pag-aari at Pagsasalin"* (Settlement of Estate and Assignment) [Exh. C/Exh. 4] executed on August 11, 1970 by the heirs of spouses Benedicto Francia and Monica Ajoco in favor of the spouses Alejandro Reyes and Amanda Salonga;

b) declaring the aforementioned "Kasulatan Ng Biling Mabibili Muli" (Exh. B/ Exh. 1) to be a contract of sale with right to repurchase and not an equitable mortgage;

c) confirming the consolidation of ownership, by operation of law, of spouses Alejandro M. Reyes and Amanda Salonga over the residential lot mentioned and referred to in Exhibit B/Exhibit 1 and Exhibit C/Exhibit 4;

d) allowing the registration with the Registry of Deeds for the Province of Bulacan of the *"Kasulatan ng Pagmeme-ari"* (Document of Ownership) [Exh. E/Exh. 5] executed by Alejandro M. Reyes on August 21, 1970 or of any appropriate deed of consolidation of ownership over the residential lot covered by Exhibit E/Exhibit 5 which the plaintiffs, as eventual owners by succession of the aforementioned proeprty (sic), may deem proper to execute;

e) ordering the defendants and all persons claiming rights under them to vacate the residential lot subject of the above-entitled case and to restore possession thereof unto the plaintiffs;

f) directing the defendants (except the heirs of Potenciana Reyes-Valenzuela) to pay unto the plaintiffs the amount of ₱20,000.00 as attorney's fees; and

g) dismissing the complaint in so far as the defendant heirs of Potenciana Reyes-Valenzuela are concerned as well as their counterclaim for damages and attorney's fees.

No pronouncement as to costs.

SO ORDERED.[20]

Aggrieved, the petitioners appealed to the CA.

CA Ruling

In the CA, the petitioners assailed the RTC's dispositions, except the dismissal of the complaint as against Potenciana's heirs.

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[20] *Rollo*, pp. 63-64.

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In its decision dated July 31, 2002, the CA ruled that the transaction covered by the *Kasulatan ng Biling Mabibiling Muli* was not a *pacto de retro sale* but an equitable mortgage under Article 1602 of the *Civil Code*; that even after the deed's execution, Leoncia, Teofilo, Jose, Jr. and their families had remained in possession of the property and continued paying realty taxes for the property; that the purported vendees had not declared the property for taxation purposes under their own names; and that such circumstances proved that the parties envisaged an equitable mortgage in the *Kasulatan ng Biling Mabibiling Muli*.

The CA observed that the heirs of the Spouses Francia had themselves admitted in paragraph 5 of the *Pagsasa-ayos ng Pag-aari at Pagsasalin* that the property had been mortgaged to their predecessors-in-interest, *viz*:

> Na, sa oras ng kamatayan ay nakaiwan sila ng isang lagay *na lupang nakasanla sa kanila* na makikilala sa kasulatang kalakip nito sa halagang LIMANG DAANG PISO (₱500.00). Ngunit nuong nabubuhay pa ang magasawang Benedicto Francia at Monica Ajoco ay nakatanggap na ng halagang ₱265.00 kay Alejandro Reyes — Filipino, kasal kay Amanda Salonga, may sapat na gulang at naninirahan sa Pulilan, Bulacan.[21]

However, the CA held that the appellants' (petitioners herein) failure to file an action for the reformation of the *Kasulatan ng Biling Mabibiling Muli* to reflect the true intention of the parties within ten years from the deed's execution on July 9, 1955, pursuant to Article 1144 of the *Civil Code*,[22] already barred them from claiming that the transaction executed between Leoncia and her children, on one hand, and the Spouses Francia, on the other hand, was an equitable mortgage. The CA agreed with

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[21] Records, p. 9.

[22] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1. Upon a written contract;
2. Upon an obligation created by law;
3. Upon a judgment.

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the RTC that the *Magkakalakip na Salaysay* did not effectively extend the period for Leoncia and her children to repurchase the property, considering that the period to repurchase had long lapsed by the time the agreement to extend it was executed on October 17, 1970.

Issues

In this appeal, therefore, the petitioners insist that:[23]

I.

The Honorable Court of Appeals erred in finding that respondents (were) already barred from claiming that the transaction entered into by their predecessors-in-interest was an equitable mortgage and not a *pacto de retro sale*;

II.

The Honorable Court of Appeals erred in affirming the findings of the court *a quo* that the *Magkasanib na Salaysay* (Joint Affidavit), executed by Alejandro, Leoncia and Jose, Jr., wherein Leoncia and her children were granted by Alejandro the right to repurchase the property at anytime for the amount of ₱500.00, was of no legal significance.

Ruling of the Court

The petition is meritorious.

A.

The CA correctly concluded that the true agreement of the parties *vis-à-vis* the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage, not a *pacto de retro* sale. There was no dispute that the purported vendors had continued in the possession of the property even after the execution of the agreement; and that the property had remained declared for taxation purposes under Leoncia's name, with the realty taxes due being paid by Leoncia, despite the execution of the agreement. Such established circumstances are among the badges of an equitable mortgage enumerated in Article 1602, paragraphs 2 and 5 of the *Civil Code*, to wit:

[23] *Rollo*, p. 12.

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

x x x x x x x x x

(2) When the vendor remains in possession as lessee or otherwise;

x x x x x x x x x

(5) When the vendor binds himself to pay the taxes on the thing sold;

x x x x x x x x x

The existence of any one of the conditions enumerated under Article 1602 of the *Civil Code*, not a concurrence of all or of a majority thereof, suffices to give rise to the presumption that the contract is an equitable mortgage.[24] Consequently, the contract between the vendors and vendees (Spouses Francia) was an equitable mortgage.

B.

Are the petitioners now barred from claiming that the transaction under the *Kasulatan ng Biling Mabibiling Muli* was an equitable mortgage by their failure to redeem the property for a long period of time?

The petitioners contend that prescription, if it must apply to them, should as well be applied to the respondents, who had similarly failed to enforce their right under the equitable mortgage within ten years from its execution on July 9, 1955. Consequently, they urge the upholding of the original intention of the parties to the *Kasulatan ng Biling Mabibiling Muli*, without taking prescription into account, because both parties did not enforce their respective rights within the ten-year prescriptive period, is more in keeping with fairness and equity.

We agree with the petitioners.

Considering that *sa oras na sila'y makinabang,* the period of redemption stated in the *Kasulatan ng Biling Mabibiling*

[24] *Raymundo v. Bandong*, G.R. No. 171250, July 4, 2007, 526 SCRA 514, 528.

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Muli, signified that no definite period had been stated, the period to redeem should be ten years from the execution of the contract, pursuant to Articles 1142 and 1144 of the *Civil Code*.[25] Thus, the full redemption price should have been paid by July 9, 1955; and upon the expiration of said 10-year period, mortgagees Spouses Francia or their heirs *should have* foreclosed the mortgage, but they did not do so. Instead, they accepted Alejandro's payments, until the debt was fully satisfied by August 11, 1970.

The acceptance of the payments even beyond the 10-year period of redemption estopped the mortgagees' heirs from insisting that the period to redeem the property had already expired. Their actions impliedly recognized the continued existence of the equitable mortgage. The conduct of the original parties as well as of their successors-in-interest manifested that the parties to the *Kasulatan ng Biling Mabibiling Muli* really intended their transaction to be an equitable mortgage, not a *pacto de retro* sale.

In *Cuyugan v. Santos*,[26] the purported buyer under a so-called contract to sell with right to repurchase also accepted partial payments from the purported seller. We held that the acceptance of partial payments was absolutely incompatible with the idea of irrevocability of the title of ownership of the purchaser upon the expiration of the term stipulated in the original contract for the exercise of the right of redemption. Thereby, the conduct of the parties manifested that they had intended the contract to be a mortgage, not a *pacto de retro* sale.

C.

When Alejandro redeemed the property on August 11, 1970, he did not thereby become a co-owner thereof, because his father

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[25] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1) Upon a written contract;

2) Upon an obligation created by law;

3) Upon a judgment.

Article 1142. A mortgage action prescribes after ten years.

[26] G.R. No. L-10265, March 3, 1916, 34 Phil 100, 121.

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Jose, Sr. was then still alive. Alejandro merely became the assignee of the mortgage, and the property continued to be co-owned by Leoncia and her sons Jose, Sr., Jose Jr., and Teofilo. As an assignee of the mortgage and the mortgage credit, Alejandro acquired only the rights of his assignors, nothing more. He himself confirmed so in the *Magkasanib na Salaysay*, whereby he acknowledged the co-owners' right to redeem the property from him at any time (*sa ano mang oras*) for the same redemption price of ₱500.00.

It is worthy to note that Alejandro's confirmation in the *Magkasanib na Salaysay* of the co-owners' right to redeem was made despite 15 years having meanwhile elapsed from the execution of the original *Kasulatan ng Biling Mabibiling Muli* (July 9, 1955) until the execution of the *Magkasanib na Salaysay* (August 21, 1970).

D.

Neither did the petitioners' failure to initiate an action for reformation within ten years from the execution of the *Kasulatan ng Biling Mabibiling Muli* bar them from insisting on their rights in the property. The records show that the parties in the *Kasulatan ng Biling Mabibiling Muli* had abided by their true agreement under the deed, to the extent that they and their successors-in-interest still deemed the agreement as an equitable mortgage despite the lapse of 15 years from the execution of the purported *pacto de retro* sale. Hence, an action for reformation of the *Kasulatan ng Biling Mabibiling Muli* was unnecessary, if not superfluous, considering that the reason underlying the requirement for an action for reformation of instrument has been to ensure that the parties to a contract abide by their true intended agreement.

The *Kasulatan ng Pagmeme-ari* executed by Alejandro on August 21, 1970 was ineffectual to predicate the exclusion of the petitioners and their predecessors in interest from insisting on their claim to the property. Alejandro's being an assignee of the mortgage did not authorize him or his heirs to appropriate the mortgaged property for himself without violating the prohibition against *pactum commissorium* contained in Article

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2088 of the *Civil Code*, to the effect that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them[;] [a]ny stipulation to the contrary is null and void." Aptly did the Court hold in *Montevirgen v. Court of Appeals:*[27]

> The declaration, therefore, in the decision of July 1, 1971 to the effect that absolute ownership over the subject premises has become consolidated in the respondents upon failure of the petitioners to pay their obligation within the specified period, is a nullity, for consolidation of ownership is an improper and inappropriate remedy to enforce a transaction declared to be one of mortgage. It is the duty of respondents, as mortgagees, to foreclose the mortgage if he wishes to secure a perfect title to the mortgaged property if he buys it in the foreclosure sale.

Moreover, the respondents, as Alejandro's heirs, were entirely bound by his previous acts as their predecessors-in-interest. Thus, Alejandro's acknowledgment of the effectivity of the equitable mortgage agreement precluded the respondents from claiming that the property had been sold to him with right to repurchase.[28]

E.

What was the effect of the *Magkasanib na Salaysay*?

Both the trial court and the CA declared that the *Magkasanib na Salaysay*, which extended the redemption period of the mortgaged property, was inefficacious, because the period to redeem could no longer be extended after the original redemption period had already expired.

In contrast, the petitioners submit that disregarding the *Magkasanib na Salaysay* made no sense, considering that the respondents' predecessors-in-interest admitted therein that the petitioners had a right to redeem the property.

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[27] G.R. No. L-44943, March 17, 1982, 112 SCRA 641, 647-648.

[28] The *Civil Code* states:

> Article 1439: Estoppel is effective only as between the parties thereto or their successors-in-interest.

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The respondents counter, however, that the *Magkasanib na Salaysay*, which acknowledged the other co-owners' right to redeem the property, was void; that the petitioners could no longer claim to be co-owners entitled to redeem the property, because the co-ownership had come to an end by Alejandro having openly repudiated the co-ownership; that Alejandro's acts of repudiation had consisted of: (*a*) redeeming the property from the Spouses Francia; (*b*) acquiring the property from the heirs of Spouses Francia by virtue of a deed of assignment denominated as *Pag-aayos ng Pag-aari at Pagsasalin;* (*c*) executing an affidavit of consolidation of ownership over the property (*Kasulatan ng Pagmeme-ari)*; (*d*) applying for the cancellation of the tax declaration of property in the name of Leoncia, and the subsequent issuance of a new tax declaration in his name; (*e*) his continuous possession of the property from 1955, which possession the respondents as his heirs had continued up to the present time, or for a period of almost 50 years already; and (*f*) the payment of the taxes by Alejandro and the respondents for more than 30 years without any contribution from the petitioners; and that such repudiation established that Alejandro and his successors-in-interest had already acquired *sole* title over the property through acquisitive prescription.

The respondents' and the lower courts' positions cannot be sustained.

The provisions of the *Civil Code* governing equitable mortgages disguised as sale contracts, like the one herein, are primarily designed to curtail the evils brought about by contracts of sale with right to repurchase, particularly the circumvention of the usury law and *pactum commissorium.*[29] Courts have taken judicial notice of the well-known fact that contracts of sale with right to repurchase have been frequently resorted to in order to conceal the true nature of a contract, *that is*, a loan secured by a mortgage. It is a reality that grave financial distress renders persons hard-pressed to meet even their basic needs or to respond to an

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[29] *Santos v. Duata*, G.R. No. L-20901, August 31, 1965, 14 SCRA 1041, 1045.

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emergency, leaving no choice to them but to sign deeds of absolute sale of property or deeds of sale with *pacto de retro* if only to obtain the much-needed loan from unscrupulous money lenders.[30] This reality precisely explains why the pertinent provision of the *Civil Code* includes a peculiar rule concerning the period of redemption, to wit:

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

x x x x x x x x x

(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;**

x x x x x x x x x

Ostensibly, the law allows a *new* period of redemption to be agreed upon or granted even after the expiration of the equitable mortgagor's right to repurchase, and treats such extension as one of the indicators that the true agreement between the parties is an equitable mortgage, not a sale with right to repurchase. It was indubitable, therefore, that the *Magkasanib na Salaysay* effectively afforded to Leoncia, Teofilo, Jose, Sr. and Jose, Jr. a fresh period within which to pay to Alejandro the redemption price of ₱500.00.

F.

Did Alejandro and his heirs (respondents herein) acquire the mortgaged property through prescription?

It is true that Alejandro became a co-owner of the property by right of representation upon the death of his father, Jose Sr.[31]

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[30] *Matanguihan v. Court of Appeals*, G.R. No. 115033, July 11, 1997, 275 SCRA 380, 390-391.

[31] Articles 970 and 975 of the *Civil Code* provide thus:

Art 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited.

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As a co-owner, however, his possession was like that of a trustee and was not regarded as adverse to his co-owners but in fact beneficial to all of them.[32]

Yet, the respondents except to the general rule, asserting that Alejandro, having earlier repudiated the co-ownership, acquired ownership of the property through prescription.

The Court cannot accept the respondents' posture.

In order that a co-owner's possession may be deemed adverse to that of the *cestui que trust* or the other co-owners, the following elements must concur:

1. The co-owner has performed unequivocal acts of repudiation of the co-ownership amounting to an ouster of the *cestui que trust* or the other co-owners;
2. Such positive acts of repudiation have been made known to the *cestui que trust* or the other co-owners;
3. The evidence on the repudiation is clear and conclusive; and
4. His possession is open, continuous, exclusive, and notorious.[33]

The concurrence of the foregoing elements was not established herein. For one, Alejandro did not have adverse and exclusive possession of the property, as, in fact, the other co-owners had continued to possess it, with Alejandro and his heirs occupying only a portion of it. Neither did the cancellation of the previous tax declarations in the name of Leoncia, the previous co-owner, and the issuance of a new one in Alejandro's name, and Alejandro's payment of the realty taxes constitute repudiation

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Art. 975. When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions.

[32] *Salvador v. Court of Appeals*, G.R. No. 109910, April 5, 1995, 243 SCRA 239, 251.

[33] *Adille v. Court of Appeals*, G.R. No. L-44546, January 29, 1988, 157 SCRA 455, 461; *Vda. de Arceo v. Court of Appeals*, G.R. No. 81401, May 18, 1990, 185 SCRA 489, 495.

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of the co-ownership. The sole fact of a co-owner declaring the land in question in his name for taxation purposes and paying the land taxes did not constitute an unequivocal act of repudiation amounting to an ouster of the other co-owner and could not constitute adverse possession as basis for title by prescription.[34] Moreover, according to *Blatero v. Intermediate Appellate Court*,[35] if a sale *a retro* is construed as an equitable mortgage, then the execution of an affidavit of consolidation by the purported buyer to consolidate ownership of the parcel of land is of no consequence and the "constructive possession" of the parcel of land will not ripen into ownership, because only possession acquired and enjoyed *in the concept of owner* can serve as title for acquiring dominion.[36]

In fine, the respondents did not present proof showing that Alejandro had effectively repudiated the co-ownership. Their bare claim that Alejandro had made oral demands to vacate to his co-owners was self-serving and insufficient. Alejandro's execution of the affidavit of consolidation of ownership on August 21, 1970[37] and his subsequent execution on October 17, 1970 of the joint affidavit[38] were really equivocal and ambivalent acts that did not manifest his desire to repudiate the co-ownership.

The only unequivocal act of repudiation was done by the respondents when they filed the instant action for quieting of title on September 28, 1994, nearly a year after Alejandro's death on September 2, 1993. However, their possession could not ripen into ownership considering that their act of repudiation was not coupled with their *exclusive* possession of the property.

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[34] *Laguna v. Levantino*, 71Phil 566 (1941); *Guillen v. Court of Appeals*, G.R. No. 83175, December 4, 1989, 179 SCRA 789,798; *Bicarme v. Court of Appeals*, G.R. No. 51914, June 6, 1990, 186 SCRA 294.

[35] G.R. No. 73889, September 30, 1987, 154 SCRA 530.

[36] *Id.*, pp. 539-541; Article 540, *Civil Code.*

[37] *Kasulatan ng Pagmeme-ari*

[38] *Magkakalakip na Salaysay*

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G.

The respondents can only demand from the petitioners the partition of the co-owned property and the reimbursement from their co-owners of the amount advanced by Alejandro to repay the obligation. They may also seek from their co-owners the proportional reimbursement of the realty taxes paid for the property, pursuant to Article 488 of the *Civil Code*.[39] In the alternative, they may opt to foreclose the equitable mortgage, considering that the petitioners' period to redeem the mortgaged property, which was ten years from the execution on October 17, 1970 of the *Magkakasanib na Salaysay*, had already long lapsed. We clarify, however, that the respondents may take these recourses only through the appropriate actions commenced in court.

H.

The petitioners' counterclaim for damages is dismissed for their failure to prove their entitlement to it.[40]

WHEREFORE, we grant the petition for review on *certiorari.*

The decision dated July 31, 2002 rendered by the Court of Appeals is reversed and set aside, and another judgment is rendered:

a) Upholding the validity of the *Kasulatan ng Biling Mabibiling Muli* (Deed of Sale with Right of Repurchase) executed on July 9, 1955 by Leoncia Mag-isa Reyes and her sons Teofilo, Jose, Sr. and Jose, Jr., all surnamed Reyes, in favor of the late Spouses Benedicto Francia and Monica Ajoco

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[39] Article 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Anyone of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

[40] *People v. Bano*, G.R. No. 148710, January 15, 2004, 419 SCRA 697, 707; *Mahinay v. Velasquez, Jr.* G.R. No. 152753, January 23, 2004, 419 SCRA 118, 121-122.

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as well as the *Pagsasa-ayos ng Pag-aari at Pagsasalin* (Settlement of Estate and Assignment) executed on August 11, 1970 by the heirs of the late Spouses Benedicto Francia and Monica Ajoco in favor of the spouses Alejandro Reyes and Amanda Salonga;

b) Declaring the *Kasulatan ng Biling Mabibili Muli* to be an equitable mortgage, not a contract of sale with right to repurchase;

c) Finding the *Magkakalakip na Salaysay* executed on October 17, 1970 by and among Leoncia Mag-isa Reyes, Jose Reyes, Sr. and Alejandro Reyes valid and effective;

c) Nullifying the *Kasulatan ng Pagmeme-ari* executed by Alejandro M. Reyes on August 21, 1970; and

d) Dismissing the petitioners' counterclaim.

Costs of suit to be paid by the respondents.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 177105-06. August 4, 2010]

JOSE REYES *y* VACIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[*] Additional member per Special Order No. 843 dated May 17, 2010.