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Tipton vs. Velasco, 6 Phil. 67, that mere lapse of time cannot give efficacy to void contracts, a ruling elevated to the category of a codal provision in Article 1410. The *Dingle* case was decided by the Court of Appeals. Even the trial court did not take pains to verify the misrepresentation of plaintiffs' counsel that the *Dingle* case was decided by this Court. An elementary knowledge of civil law could have alerted the trial court to the egregious error of plaintiffs' counsel in arguing that Article 1410 applies to wills.

WHEREFORE, the lower court's orders of May 3 and June 17, 1968 are reversed and set aside and its order of dismissal dated January 10, 1968 is affirmed. Costs against the private respondents.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, and *Santos, JJ.*, concur.

Concepcion Jr., J., is on leave.

FIRST DIVISION

[G.R. No. L-36821. June 22, 1978]

JOSE P. DIZON, *petitioner, vs.* **ALFREDO G. GABORRO (Substituted by PACITA DE GUZMAN GABORRO as Judicial Administratrix of the Estate of Alfredo G. Gaborro) and the DEVELOPMENT BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; CONTRACTS; REFORMATION; MISTAKE AS A GROUND THEREOF, DISCUSSED.— Mistake

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is a ground for the reformation of an instrument when, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, and one of the parties may ask for such reformation to the end that such true intention may be expressed. (Art. 1359, New Civil Code). When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed. (Art. 1361, New Civil Code.) It was a mistake for the parties to execute the Deed of Sale With Assumption of Mortgage and the Option to Purchase Real Estate and stand on the literal meaning of the terms and stipulations used therein.

2. **ID.; ID.; ID.; ID.; APPLICABLE IN CASE AT BAR.**— The instruments must, therefore, be reformed in accordance with the intention and legal rights and obligations of the parties — the petitioner, the respondent and the Banks. We agree with the reformation decreed by the trial and appellate courts, but in the sense that petitioner Jose P. Dizon has the right to reacquire the three parcels of land within the one-year period indicated below by refunding or reimbursing to respondent Alfredo G. Gaborro or the Judicial Administratrix of his Estate whatever amount the latter has actually paid on account of the *principal only*, of the loans of Dizon with the DBP and PNB, *excluding* the interests and land taxes that may have been paid or may have accrued, on duly certified financial statements issued by the said banks.

APPEARANCES OF COUNSEL

Leonardo Abola for petitioner.
Carlos J. Antiporda for respondents.

D E C I S I O N

GUERRERO, *J.*:

Petition for review on *certiorari* of the decision of the Court of Appeals[1] in CA-G.R. No. 46976-R entitled "*Jose P. Dizon*,

[1] First Division, penned by Justice Canonoy, with the concurrence of Acting Presiding Justice Juan P. Enriquez and Justice Eulogio S. Serrano.

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Plaintiff-Appellant, versus Alfredo G. Gaborro (substituted by Pacita de Guzman Gaborro as Judicial Administratrix of the Estate of Alfredo G. Gaborro) and the Development Bank of the Philippines, Defendants-Appellees," affirming with modification the decision of the Court of First Instance of Pampanga, Branch II in Civil Case No. 2184.

The dispositive portion of the decision sought to be reviewed reads:

"IN VIEW OF THE FOREGOING, the judgment appealed therefrom is hereby affirmed with modification that the plaintiff-appellant has the right to refund or reimburse the defendant appellees the sum of P131,831.91 with interest at 8% per annum from October 6, 1959 until full payment, said right to be exercised within one year from the date this judgment becomes final, with the understanding that, if he fails to do so within the said period, then he is deemed to have lost his right over the lands forever. With costs against the appellant."[2]

MODIFIED.

The basic issue to be resolved in this case is whether the "Deed of Sale with Assumption of Mortgage" and the "Option to Purchase Real Estate," two instruments executed by and between petitioner Jose P. Dizon and Alfredo G. Gaborro (defendant below) on the same day, October 6, 1969 constitute in truth and in fact an absolute sale of the three parcels of land therein described or merely an equitable mortgage or conveyance thereof by way of security for reimbursement, refund or repayment by petitioner Jose P. Dizon of any and all sums which may have been paid to the Development Bank of the Philippines and the Philippine National Bank by Alfredo G. Gaborro (later substituted herein by his wife Pacita de Guzman Gaborro as administratrix of the estate of Alfredo G. Gaborro) who had died during the pendency of the case.

A supplementary issue raised is whether or not Gaborro or the respondent administratrix of the estate should account for all the fruits produced and income received by them from the

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[2] Records, pp. 50-51.

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lands mentioned and described in the aforesaid "Deed of Sale with Assumption of Mortgage."

The antecedent facts established in the record are not disputed. Petitioner Jose P. Dizon was the owner of the three (3) parcels of land, subject matter of this litigation, situated in Mabalacat, Pampanga with an aggregate area of 130.58 hectares, as evidenced by Transfer Certificate of Title No. 15679. He constituted a first mortgage lien in favor of the Development Bank of the Philippines in order to secure a loan in the sum of ₱38,000.00 and a second mortgage lien in favor of the Philippine National Bank to secure his indebtedness to said bank in the amount of ₱93,831.91.

Petitioner Dizon having defaulted in the payment of his debt, the Development Bank of the Philippines foreclosed the mortgage extrajudicially pursuant to the provisions of Act No. 3135. On May 26, 1959, the lands were sold to the DBP for ₱31,459.21, which amount covered the loan, interest and expenses, and the corresponding "Certificate of Sale," (Exhibit A-2, Exhibit 1-b) was executed in favor of the said bank. On November 12, 1959, Dizon himself executed the deed of sale (Exhibit A-1-a) over the properties in favor of the DBP which deed was recorded in the Office of the Register of Deeds on October 6, 1960.

Sometime prior to October 6, 1959 Alfredo G. Gaborro and Jose P. Dizon met. Gaborro became interested in the lands of Dizon. Dizon originally intended to lease to Gaborro the property which had been lying idle for some time. But as the mortgage was already foreclosed by the DBP and the bank in fact purchased the lands at the foreclosure sale on May 26, 1959, they abandoned the projected lease. They then entered into the following contract on October 6, 1959 captioned and quoted, to wit:

DEED OF SALE WITH ASSUMPTION
OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

This DEED OF SALE WITH ASSUMPTION OF MORTGAGE, made and executed at the City of Manila, Philippines, on this 6th day of October, 1959 by and between —

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JOSE P. DIZON, of legal age, Filipino, married to Norberta Torres, with residence and postal address at Mabalacat, Pampanga, hereinafter referred to as the VENDOR,

ALFREDO G. GABORRO, likewise of legal age, Filipino, married to Pacita de Guzman, with residence and postal address at 46, 7th St., Gilmore Avenue, Quezon City, hereinafter referred to as the VENDEE,

W I T N E S S E T H: That —

WHEREAS, the VENDOR is the registered owner of three (3) parcels of land covered by Transfer Certificate of Title No. 15679 of the land records of Pampanga, situated in the Municipality of Mabalacat, Province of Pampanga, and more particularly described and bounded as follows:

1. A parcel of land (Lot No. 188 of the Cadastral Survey of Mabalacat), with the improvements thereon, situated in the Municipality of Mabalacat. Bounded on the NE., by Lot No. 187; on the SE., by Lots Nos. 183, 189, 191 and 192; on the SW. by Lot No. 192 and on the NW., by the unimproved provincial road to Magalang Containing an area of TWO HUNDRED AND TWENTY ONE THOUSAND ONE HUNDRED SEVENTY TWO SQUARE METERS (221,172), more or less.

2. A parcel of land (Lot No. 193 of the Cadastral Survey of Mabalacat), with the improvements thereon, situated in the Municipality of Mabalacat. Bounded on the NE. by a road and Lots Nos. 569, 570 and 571; on the SE., by Lot No. 571 and the unimproved road to Magalang; on the SW., by a road and on the NE., by a road and the Sapang Pritil. Containing an area of NINE HUNDRED SEVENTY EIGHT THOUSAND SEVEN HUNDRED AND SEVENTEEN SQUARE METERS (978,717), more or less.

3. A parcel of land (Lot No. 568 of the Cadastral Survey of Mabalacat), with the improvements thereon, situated in the Municipality of Mabalacat. Bounded on the NE., by Lot No. 570, on the SE., SW and NW by roads. Containing an area of ONE HUNDRED FIVE THOUSAND NINE HUNDRED AND TWENTY ONE SQUARE METERS (105,921), more or less.

WHEREAS, the above-described properties are presently mortgaged (first mortgage) to the Development Bank of the Philippines (formerly Rehabilitation Finance Corporation) to secure the payment

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of a loan, plus interest, of THIRTY EIGHT THOUSAND PESOS ONLY (38,000.00), Philippine currency, as evidenced by a deed of mortgage for ₱. . . . .dated . . . . . ., which deed was ratified and acknowledged before Notary Public of Manila, Mr. . . . .as Doc. No....; Page No. . . . .; Reg. No. . . . .Series of 196. . . . .;

WHEREAS, the aforesaid properties are likewise mortgage (second mortgage) to the Philippine National Bank to secure the payment of a loan of NINETY THREE THOUSAND EIGHT HUNDRED THIRTY ONE PESOS & 91/100 (93,831.91), Philippine Currency, plus interest up to August 13, 1957, as evidenced by deed of Mortgage for ₱. . . . . dated. . . . . .which deed was ratified and acknowledged before Notary Public of Manila, Mr. . . . ., as Doc. No. . . . ., Page No. . . ., Reg. No. . . . Series of 196. . . . ;

WHEREAS, the VENDOR, has offered to sell and the VENDEE is willing to purchase the above-described properties for ONE HUNDRED THIRTY ONE THOUSAND EIGHT HUNDRED THIRTY ONE PESOS & 91/100 (131,831.91), Philippine Currency, under the terms and conditions herein below set forth;

NOW, THEREFORE, for and in consideration of the above premises and the amount of ONE HUNDRED THIRTY ONE THOUSAND EIGHT HUNDRED THIRTY ONE PESOS & 91/100 (₱131,831.91), Philippine Currency, in hand paid in cash by the VENDEE unto the VENDOR, receipt whereof is hereby acknowledged by the VENDOR to his entire and full satisfaction, and the assumption by the VENDEE of the entire mortgage indebtedness, both with the Development Bank of the Philippines and the Philippine National Bank above mentioned, the VENDOR does by these presents, sell, transfer and convey, as he had sold, transferred, and conveyed, by way of absolute sale, perpetually and forever, unto the VENDEE, his heirs, successors and assigns, above described properties, with all the improvements thereon, free from all liens and encumbrances of whatever nature, except the pre-existing mortgage obligations with the Development Bank of the Philippines and the Philippine National Bank aforementioned. The VENDOR does hereby warrant title, ownership and possession over the properties herein sold and conveyed, and binds himself to defend the same from any and all claimants.

That the VENDEE, does by these presents, assume as he has assumed, under the same terms and conditions of the mortgage contracts dated . . . . . .and . . . . . ., of the mortgage indebtedness of the VENDOR in favor of the Development Bank of

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the Philippines and the Philippine National Bank, respectively, as if the aforesaid documents were personally executed by the VENDEE and states and reiterates all the terms and conditions stipulated in said both documents, making them to all intents and purposes, parts hereof by reference.

IN WITNESS WHEREOF, the VENDOR and the VENDEE, together with their instrumental witnesses, have signed this deed of the place, date, month and year first above written.

(Sgd.) JOSE P. DIZON
Vendor

(Sgd.) ALFREDO G. GABORRO
Vendee

Signed in the Presence of:

(Sgd.) (Illegible) (Sgd.) (Illegible)

(Acknowledgment Omitted)

The second contract executed the same day, October 6, 1959 is called option to Purchase Real Estate, and is in the following wise and manner:

OPTION TO PURCHASE REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS:

That I, ALFREDO G. GABORRO, of legal age, Filipino, married to Pacita de Guzman, with residence and postal address at 46, 7th St., Gilmore Ave., Quezon City, for valuable consideration, do hereby give to JOSE P. DIZON, of legal age, Filipino, married to Norberta Torres, resident of Mabalacat, Pampanga, his heirs, successors and assigns, the option of repurchasing the following described properties:.

TRANSFER CERTIFICATE OF TITLE
NO. 15679, PROVINCE OF PAMPANGA

1. A parcel of land (Lot No. 188 of Cadastral Survey of Mabalacat, Pamp.), containing an area of (211,172) more or less.

2. A parcel of land (Lot No. 193 of the Cadastral Survey of Mabalacat, Pampanga), containing an area of (978,172) more or less.

3. A parcel of land (Lot No. 568 of the Cadastral Survey of Mabalacat, Pamp.), containing an area of (105, 921), more or less.

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which I acquired from the said Jose P. Dizon by purchase by virtue of that document entitled Deed of Sale with Assumption of Mortgage dated October 6, 1959, acknowledged by both of us before Notary Public of Manila GREGORIO SUMBILIO as Doc. No. 342, Page No. 70, Reg. No. VII Series of 1959.

Said option shall be valid and effective within the period comprised from January, 1965 to December 31, 1970, inclusive, upon payment of the amount of ONE HUNDRED THIRTY ONE THOUSAND EIGHT HUNDRED THIRTY ONE PESOS & 91/100 (₱131,831.91), Philippine Currency, plus an interest of eight per centum (8%) thereof, per annum. This is without prejudice at any time to the payment by Mr. Dizon of any partial amount to be applied to the principal obligation, without any way disturbing the possession and/or ownership of the above properties since only full payment can effect the necessary change.

In the event that Mr. Jose P. Dizon may be able to find a purchaser for the foregoing properties on or the fifth year from the date the execution of this document, the GRANTEE, Mr. JOSE P. DIZON, may do so provided that the aggregate amount which was paid to Development Bank of the Philippines and to the Philippine National Bank together with the interests thereon at the rate of 8% shall be refunded to the undersigned.

Furthermore, in case Mr. Jose P. Dizon shall be able to find a purchaser for the said properties, it shall be his duty to first notify the undersigned of the contemplated sale, naming the price and the purchaser therefor, and awarding the first preference in the sale hereof to the undersigned.

IN WITNESS WHEREOF, I have hereunto signed these presents at the City of Manila, on this 6th day of October, 1959.

(Sgd.) ALFREDO G. GABORRO

CONFORME:

(Sgd.) JOSE P. DIZON

SIGNED IN THE PRESENCE OF:

(Acknowledgment Omitted)

The sum of ₱131,813.91 which purports to be the consideration of the sale was not actually paid by Alfredo G. Gaborro to the petitioner. The said amount represents the aggregate debts of

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the petitioner with the Development Bank of the Philippines and the Philippine National Bank.

After the execution of said contracts, Alfredo G. Gaborro took possession of the three parcels of land in question.

On October 7, 1959, Gaborro wrote the Development Bank of the Philippines a letter (Exh. J), as follows:

"S i r :

This is with reference to your mortgage lien of ₱38,000.00 more or less over the properties more particularly described in TCT No. 15679 of the land records of Pampanga in the name of Jose P. Dizon. In this connection, we have the honor to inform you that pursuant to a Deed of Sale with Assumption of Mortgage executed on October 6, 1959 by Jose P. Dizon in my favor, copy of which is hereto attached, the ownership of the same has been transferred to me subject of course to your conformity to the assumption of mortgage. As a consequence of the foregoing document, the obligation therefore of paying your goodselves the total amount of indebtedness has shifted to me.

Considering that these agricultural properties have not been under cultivation for quite a long time, I would therefore request that, on the premise that the assumption of mortgage would be agreeable to you, that I be allowed to pay the outstanding obligation, under the same terms and conditions as embodied in the original contract of mortgage within ten (10) years to be divided in 10 equal annual amortizations. I am enclosing herewith a check in the amount of ₱3,609.95 representing 10% of the indebtedness of Jose P. Dizon to show my honest intention in assuming the mortgage obligation to you. x x x"

The Board of Governors of the DBP, in its Resolution No. 7066 dated October 21, 1959 approved the offer of Gaborro but said Board required him to pay 20% of the purchase price as initial payment. (Exh. D) Accordingly, on July 11, 1960, the DBP and Gaborro executed a conditional sale of the properties in consideration of the sum of ₱36,090.95 (Exh. C) payable 20% down and the balance in 10 years in the yearly amortization plan at 8 % per annum.

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On January 7, 1960, Dizon assigned his right of redemption to Gaborro in an instrument (Exh, 9) entitled:

ASSIGNMENT OF RIGHT OF REDEMPTION AND ASSUMPTION OF OBLIGATION

KNOW ALL MEN BY THESE PRESENTS:

This instrument, made and executed by and between JOSE P. DIZON, married to Norberta P. Torres, Filipino, of legal age, with residence and postal address at Mabalacat, Pampanga, hereinafter referred to as the ASSIGNOR and ALFREDO G. GABORRO, married to Pacita de Guzman, likewise of legal age, Filipino, with residence and postal address at 46, 7th Street, Gilmore Ave., Quezon City, hereinafter referred to as the ASSIGNEE,

W I T N E S S E T H:

WHEREAS, the Assignor is the owner and mortgagor of three (3) parcels agricultural land together with all the improvements existing thereon and more particularly described and bounded as follows:.

TRANSFER CERTIFICATE OF TITLE NO. 1567 PROVINCE OF PAMPANGA

1. A parcel of land (Lot No. 188 of the Cadastral Survey of Mabalacat), with the improvements thereon situated in the Municipality of Mabalacat. Bounded on the NE, by Lot No. 187; on the SE. by Lots Nos. 183, 189, 191 and 192; on the SW. by Lot No. 192; and on the NW, by the unimproved provincial road to Magalang. Containing an area of two hundred twenty-one thousand one hundred and seventy two square meters (221,172), more or less.

2. A parcel of land (Lot No. 193 of the Cadastral Survey of Mabalacat), with the improvements thereon, situated in the Municipality of Mabalacat. Bounded on the NE. by a road and Lots Nos. 569, 670 and 571; on the SE. by Lot No. 571 and the unimproved road to Magalan; on the SW. by a road; and on the NW. by a road and the Sapang Pritil. Containing an area of nine hundred seventy eight thousand seven hundred and seventeen square meters (978,717), more or less.

3. A parcel of land (Lot No. 568 of the Cadastral Survey of Mabalacat), with the improvements thereon, situated in the

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Municipality of Mabalacat. Bounded on the NE. by Lot No. 570; and on the SE., SW. and NW. by roads. Containing an area of one hundred five thousand nine hundred and twenty-one square meters (105,921), more or less.

WHEREAS, the above described properties were mortgaged with the Rehabilitation Finance Corporation, now Development Bank of the Philippines, which mortgage has been foreclosed on May 26, 1959;

AND WHEREAS, the herein Assignor has still the right to redeem the said properties from the said Development Bank of the Philippines within a period of one (1) year counted from the date of foreclosure of the said mortgage.

NOW, THEREFORE, for .... and other valuable considerations, receipt whereof is hereby acknowledged by the Assignor from the Assignee, the herein Assignor does hereby transfer and assign to the herein Assignee, his heirs, successors and assigns the aforesaid right to redeem the aforementioned properties above described.

That with this document the herein Assignor relinquishes any and all rights to the said properties including the improvements existing thereon.

That the Assignee, by these presents, hereby assumes the obligation in favor of the said Development Bank of the Philippines, as paying whatever legal indebtedness the Assignor has with the said Bank in connection with the transaction regarding the above mentioned properties subject to the terms and conditions that the said Bank may require and further recognizes the second mortgage in favor of the Philippine National Bank.

IN WITNESS WHEREOF, the parties have hereunto set their hands in the City of Manila, Philippines this _____ day _____ of 1959.

(Sgd.) JOSE P. DIZON
(Assignor)

(Sgd.) ALFREDO G. GABORRO
(Assignee)

(Acknowledgment Omitted)

After the execution of the conditional sale to him, Gaborro made several payments to the DBP and PNB. He introduced

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improvements, cultivated the lands, raised sugarcane and other crops and appropriated the produce to himself. He also paid the land taxes thereon.

On July 5, 1961, Jose P. Dizon through his lawyer, Atty. Leonardo Abola, wrote a letter to Gaborro informing him that he is formally offering to reimburse Gaborro of what he paid to the banks but without, however, tendering any cash, and demanding an accounting of the income and of the property, contending that the transaction they entered into was one of antichresis. Gaborro did not accede to the demands of the petitioner, whereupon, on July 30, 1962, Jose P. Dizon instituted a complaint in the Court of First Instance of Pampanga, against Gaborro, alleging that the documents Deed of Sale With Assumption of Mortgage and the Option to Purchase Real Estate did not express the true intention and agreement between the parties. Petitioner Dizon, as plaintiff below, contended that the two deeds constitute in fact a single transaction; that their real agreement was not an absolute sale of the said parcels of land but merely an equitable mortgage or conveyance by way of security for the reimbursement or refund by Dizon to Gaborro of any and all sums which the latter may have paid on account of the mortgage debts in favor of the DBP and the PNB. Plaintiff prayed that defendant Gaborro be ordered to accept plaintiff's offer to reimburse him of what he paid to the banks; to surrender the possession of the lands to plaintiff; to make an accounting of all the fruits, produce, harvest and other income which he had received from the three (3) parcels of land; and to pay the plaintiff for the loss of two barns and for damages.

In its answer, the DBP specifically denied the material averments of the complaint and stated that on October 6, 1959, the plaintiff Dizon was no longer the owner of the land in question because the DBP acquired them at the extrajudicial foreclosure sale held on May 26, 1959, and that the only right which plaintiff possessed was a mere right to redeem the lands under Act 3135 as amended.

Defendant Alfredo G. Gaborro also answer, denying the material averments of the complaint, stating that the "Deed of

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Sale with Assumption of Mortgage" expresses the true agreement of the parties "fully, truthfully and religiously" but the "Option to Purchase Real Estate" does not express the true intention of the parties because it was made only to protect the reputation of the plaintiff among his townmates, and even in the supposition that said option is valid, the action is premature. He also filed a counterclaim for damages, which plaintiff denied.

The issues having been joined, a pre-trial was held and the following stipulation of facts admitted by the parties was approved by the Court in the following order dated February 22, 1963:

ORDER

At today's initial trial, the following were present: Mr. Leonardo Abola, for the plaintiff; Mr. Carlos Antiporda, for the defendant Alfredo Gaborro; and Mr. Virgilio Fugoso, for the Development Bank of the Philippines:

The parties have stipulated on the following facts:

1. That Annex A attached to the complaint is marked Exhibit A-Stipulation. The parties have admitted the due execution, authenticity and genuineness of said Exhibit A-Stipulation. This fact has been admitted by all the three parties.

2. That the defendant Gaborro executed Annex B, which is marked Exhibit B-Stipulation. This fact has been admitted only between plaintiff and defendant Gaborro.

3. That the three parcels of land referred to in paragraph 3 of the complaint, on or before October 6, 1959, were subject to a first mortgage lien in favor of the Development Bank of the Philippines, formerly Rehabilitation Finance Corporation, to secure payment of a loan obtained by the plaintiff Jose P. Dizon in the original sum of ₱38,000.00 plus interest, which has been assumed by defendant Gaborro by virtue of a document, Exhibit A-Stipulation, and also subject to a second mortgage lien in favor of the Philippine National Bank to secure the payment of a loan in the sum of ₱93,831.91 plus interest up to August 30, 1951, which mortgage liens were duly annotated on TCT 15679. This fact has been admitted by the plaintiff and defendant Gaborro.

4. In respect to the foreclosure of the first mortgage referred to above, it was admitted that the same was foreclosed on May 26, 1959, the second mortgage has not been admitted nor foreclosed.

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5. That the Development Bank of the Philippines admits that the first mortgage referred to above was foreclosed on May 26, 1959 under the provisions of Public Act No. 3135, as amended.

6. That subsequently the Development Bank and the defendant Gaborro executed a document entitled Conditional Sale over the same parcels of land referred to in paragraph 3 of the complaint, and copy thereof will be furnished by the Development Bank of the Philippines and marked Exhibit C-Stipulation.

7. That on or before October 6, 1960, TCT No. 15679 of the Register of Deeds of Pampanga in the name of Jose P. Dizon covering the three parcels of land referred to in the complaint was cancelled and in lieu thereof TCT NO. 24292 of the Register of Deeds of Pampanga was issued in the name of the Development Bank of the Philippines. This fact has been admitted by all the parties.

8. That after the execution of the deed of conditional sale, certain payments were made by the defendant Gaborro to the Development Bank, the exact amount to be determined later and receipts of payments to be also exhibited later. This fact has been admitted by all the three parties.

9. That since October 6, 1959, the defendant Gaborro has made several payments to the PNB in the amounts appearing on the receipts which will be shown later, such payments being made on account of the sum of ₱38,831.91. The payment was assumed by said defendant Gaborro. This fact has been admitted by plaintiff and defendant Gaborro only.

10. That since the execution of Exhibits A and B-Stipulation, the defendant Gaborro has been and still is in the actual possession of the three parcels of land in question and he is actually cultivating the same and that the land taxes thereon have been paid by said defendant Gaborro, the amounts of said taxes appearing on the official receipts to be shown later. This fact has been admitted by plaintiff and defendant Gaborro only.

11. That since defendant Gaborro took possession of the lands in question, he has been appropriating all the fruits produced and other income of said lands without giving to the plaintiff any share thereof. This fact has been admitted by plaintiff and defendant Gaborro only.

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Let a copy of this order be served upon the plaintiff, defendant Gaborro and the Development Bank of the Philippines with the understanding that, if, within fifteen (15) days, none of the parties questions the correctness of the facts set forth above, this stipulation of facts shall be conclusive upon the parties interested in this case.

Set the trial on the controversial facts on April 18, 1963, at 9:00 o'clock in the morning.

Paragraphs 3 and 10 of the above quoted order were deleted in an order dated July 26, 1963.

The records disclose that during the pendency of the case in the trial court, motions were filed by the plaintiff for the appointment of a receiver of the properties but all were denied. Plaintiff also reiterated the same motion before the appellate court which, however, dismissed the same, reserving to him the right to file in the trial court. Plaintiff did file but with the same result, *Certiorari* proceedings were resorted to in the Court of Appeals in CA-G.R. No. SP-01403 entitled "*Jose P. Dizon vs. Hon. Felipe Buencamino, et al.*" which the respondent court denied.

After trial the court held that the true agreement between Jose P. Dizon, the plaintiff therein, and the defendant Alfredo G. Gaborro is that the defendant would assume and pay the indebtedness of the plaintiff to the Development Bank of the Philippines and the Philippine National Bank, and in consideration therefor, the defendant was given the possession and enjoyment of the properties in question until the plaintiff shall have reimbursed to defendant fully the amount of ₱131,831.91 plus 6% interest per annum.

Accordingly, on March 14, 1970, the lower court rendered judgment, the dispositive part of which reads:

"IN VIEW OF THE FOREGOING, the documents entitled 'Deed of Sale with Assumption of Mortgage' (Exhibit A-Stipulation) and 'Option to Purchase Real Estate' (Exhibit B-Stipulation) are hereby reformed to the extent indicated above. However, since this action was filed before the period allowed the plaintiff to redeem his property, the prematurity of this action aside from not being principally alleged

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in the complaint, deters this Court from ordering further reliefs and remedies. The counterclaim of the defendant is dismissed.

The plaintiff's motion for new trial and for reconsideration, and motion for admission of supplemental complaint having been denied for lack of merit, on June 6, 1970, plaintiff appealed to the Court of Appeals, which, however, affirmed the decision with the modification that the plaintiff-appellant has the right to refund or reimburse the defendant-appellee the sum of ₱131,831.91 with interest at 8% per annum from October 6, 1959 until full payment, said right to be exercised within one (1) year from the date the judgment becomes final, with the understanding that, if he fails to do so within the said period, then he is deemed to have lost his right over the lands forever.

Petitioner's motion for reconsideration and/or rehearing having been denied by the Court of Appeals, hence the present petition for review on *certiorari*. The petitioner assigns the following errors, to wit:

"I. The Court of Appeals, like the lower court, erred in not holding that upon established facts and undisputed documentary evidence, the deed of sale with assumption of mortgage (Exhibit A-Stipulation) constitutes an equitable mortgage or conveyance to secure petitioner's obligation to reimburse or refund to defendant Alfredo Gaborro any and all sums to the extent of ₱131,831.91, paid by said defendant in total or partial satisfaction of petitioner's mortgage debts to the DBP and the PNB. In this connection, the Court of Appeals erred:

(A) In not finding that the petitioner was the lawful owner of the lands in question:

(B) In not finding that the deed of sale in question is not a real and unconditional sale; and

(C) In not holding that the option to purchase real estate (Exhibit B-Stipulation) is conclusive evidence that the transaction in question is in fact an equitable mortgage.

"II. The Court of Appeals also erred in funding that the instrument entitled 'Assignment of Right of Redemption and Assumption of Obligation' is conclusive evidence that the real transaction evidenced

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by the 'Deed of Sale with Assumption of Mortgage' is not an equitable mortgage. In this connection the said court also erred or at least committed a grave abuse of discretion:

(A) In not finding that the said deed of assignment is in fact a mere reiteration of the terms and condition of the deed of sale;

(B) In finding that the price or consideration of the aforesaid assignment of right of redemption consisted of 300 cavans of palay delivered by Mrs. Gaborro to the petitioner; and

(C) In finding that defendant Gaborro purchased the lands in question by virtue of the aforementioned deed of assignment.

"III. The Court of Appeals, like the trial court, also erred in not finding that the estate of Alfredo G. Gaborro is under obligation to render an accounting of all the produce, fruits and other income of the lands in question from October 6, 1959, and to reconvey the said lands to the herein petitioner. In this connection, the said court also erred:

(A) In not holding that as a mortgagee in possession, the Gaborro estate has the obligation to either render an accounting of the produce or fruits of the lands, or to pay rentals for the occupation of said lands;

(B) In not finding that the Gaborro estate has the obligations to reconvey the lands in controversy to the herein petitioner, upon payment of the balance due from him after deducting either the net value of the produce or fruits of the said lands or the rentals thereof;

(C) In not finding that further reliefs or remedies may be granted the herein petitioner; and

(D) In not ordering the admission of herein petitioner's 'Supplemental Complaint' dated April 30, 1970.

"IV. The Court of Appeals finally erred in not reversing the decision of the trial court, and in not rendering judgment declaring that the deed of sale with assumption of mortgage (Exhibit A-Stipulation) is in fact an equitable mortgage; and in not ordering the Gaborro estate either to render an accounting of all the produce or fruits of the lands in question or to pay rentals for the occupation thereof, from October 6, 1959: and in not ordering the estate of

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Alfredo G. Gaborro to reconvey, transfer and assign unto the petitioner the aforementioned lands."

The two instruments sought to be reformed in this case appear to stipulate rights and obligations between the parties thereto pertaining to and involving parcels of land that had already been foreclosed and sold extrajudicially, and purchased by the mortgage creditor, a third party. It becomes, therefore, necessary to determine the legality of said rights and obligations arising from the foreclosure and sale proceedings not only between the two contracting parties to the instruments executed between them but also in so far as the agreement affects the rights of the third party, the purchaser Bank.

Act 3135, Section 6 as amended by Act 4118, under which the properties were extrajudicially foreclosed and sold, provides that:

"Sec. 6. In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of sale debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term or one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure; in so far as these are not consistent with the provisions of this Act.

Under the Revised Rules of Court, Rule 39, Section 33, the judgment debtor remains in possession of the property foreclosed and sold, during the period of redemption. If the judgment debtor is in possession of the property sold, he is entitled to retain it and receive the fruits, the purchaser not being entitled to such possession. (*Riosa v. Verzosa*, 26 Phil. 86; *Velasco v. Rosenberg's Inc.*, 32 Phil. 72; *Pabico v. Pauco*, 43 Phil, 572; *Power v. PNB*, 54 Phil. 54; *Gorospe v. Gochangco*, L-12735, Oct. 30, 1959).

A judgment debtor, whose property is levied on execution, may transfer his right of redemption to any one whom he may

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desire. The right to redeem land sold under execution within 12 months is a property right and may be sold voluntarily by its owner and may also be attached and sold under execution. (*Magno v. Viola and Sotto*, 61 Phil. 80).

Upon foreclosure and sale, the purchaser is entitled to a certificate of sale executed by the sheriff. (Section 27, Revised Rules of Court) After the termination of the period of redemption and no redemption having been made, the purchaser is entitled to a deed of conveyance and to the possession of the properties. (Section 35, Revised Rules of Court). The weight of authority is to the effect that the purchaser of land sold at public auction under a writ of execution only has an inchoate right in the property, subject to be defeated and terminated within the period of 12 months from the date of sale, by a redemption on the part of the owner. Therefore, the judgment debtor in possession of the property is entitled to remain therein during the period allowed for redemption. (*Riosa v. Verzosa*, 26 Phil. 86; 89; *Gonzales v. Calimbas*, 51 Phil, 355.)

In the case before Us, after the extrajudicial foreclosure and sale of his properties, petitioner Dizon retained the right to redeem the lands, the possession, use and enjoyment of the same during the period of redemption. And these are the only rights that Dizon could legally transfer, cede and convey unto respondent Gaborro under the instrument captioned Deed of Sale with Assumption of Mortgage (Exh A-Stipulation), likewise the same rights that said respondent could acquire in consideration of the latter's promise to pay and assume the loan of petitioner Dizon with DBP and PNB.

Such an instrument cannot be legally considered a real and unconditional sale of the parcels of land, firstly, because there was absolutely no money consideration therefor, as admittedly stipulated, the sum of ₱131,831.91 mentioned in the document as the consideration "receipt of which was acknowledged" was not actually paid; and secondly, because the properties had already been previously sold by the sheriff at the foreclosure sale, thereby divesting the petitioner of his full right as owner thereof to dispose and sell the lands.

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In legal consequence thereby, respondent Gaborro as transferee of these certain limited rights or interests under Exh. A-Stipulation, cannot grant to petitioner Dizon more than said rights, such as the option to purchase the lands as stipulated in the document called Option to Purchase Real Estate (Exhibit B-Stipulation). This is necessarily so for the reason that respondent Gaborro did not purchase or acquire the full title and ownership of the properties by virtue of the Deed of Sale With Assumption of Mortgage (Exh. A-Stipulation), earlier executed between them which We have ruled out as an absolute sale. The only legal effect of this Option Deed is the grant to petitioner the right to recover the properties upon reimbursing respondent Gaborro of the total sums of money that the latter may have paid to DBP and PNB on account of the mortgage debts, the said right to be exercised within the stipulated 5 years period.

In the light of the foreclosure proceedings and sale of the properties, a legal point of primary importance here, as well as other relevant facts and circumstances, We agree with the findings of the trial and appellate courts that the true intention of the parties is that respondent Gaborro would assume and pay the indebtedness of petitioner Dizon to DBP and PNB, and in consideration therefor, respondent Gaborro was given the possession, the enjoyment and use of the lands until petitioner can reimburse fully the respondent the amounts paid by the latter to DBP and PNB, to accomplish the following ends: (a) payment of the bank obligations; (b) make the lands productive for the benefit of the possessor, respondent Gaborro; (c) assure the return of the land to the original owner, petitioner Dizon, thus rendering equity and fairness to all parties concerned.

In view of all these considerations, the law and jurisprudence, and the facts established, We find that the agreement between petitioner Dizon and respondent Gaborro is one of those innominate contracts under Art. 1307 of the New Civil Code whereby petitioner and respondent agreed "to give and to do" certain rights and obligations respecting the lands and the mortgage debts of petitioner which would be acceptable to the

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bank, but partaking of the nature of the antichresis insofar as the principal parties, petitioner Dizon and respondent Gaborro, are concerned.

Mistake is a ground for the reformation of an instrument when, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, and one of the parties may ask for such reformation to the end that such true intention may be expressed. (Art. 1359, New Civil code). When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed. (Art. 1361, New Civil Code.) It was a mistake for the parties to execute the Deed of Sale With Assumption of Mortgage and the Option to Purchase Real Estate and stand on the literal meaning of the terms and stipulations used therein.

The instruments must, therefore be reformed in accordance with the intention and legal rights and obligations of the parties — the petitioner, the respondent and the Banks. We agree with the reformation decreed by the trial and appellate courts, but in the sense that petitioner Jose P. Dizon has the right to reacquire the three parcels of land within the one-year period indicated below by refunding or reimbursing to respondent Alfredo G. Gaborro or the Judicial Administratrix of his Estate whatever amount the latter has actually paid on account of the *principal only*, of the loans of Dizon with the DBP and PNB, *excluding* the interests and land taxes that may have been paid or may have accrued, on duly certified financial statements issued by the said banks.

On the issue of the accounting of the fruits, harvests and other income received from the three parcels of land from October 6, 1959 up to the present, prayed and demanded by Dizon of Gaborro or the Judicial Administratrix of the latter's estate, We hold that in fairness and equity and in the interests of justice that since We have ruled out the obligation of petitioner Dizon to reimburse respondent Gaborro of any interests and land taxes that have accrued or been paid by the latter on the loans of Dizon with DBP and PNB, petitioner Dizon in turn is not entitled

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to an accounting of the fruits, harvests and other income received by respondent Gaborro from the lands, for certainly, petitioner cannot have both benefits and the two may be said to offset each other.

By virtue of the Option to Purchase Real Estate (Exh. B-Stipulation) which on its face granted Dizon the option to purchase the properties which must be exercised within the period from January, 1960 to December 31, 1965 but which We held to be simply the grant of the right to petitioner Dizon to recover his properties within the said period, although already expired by reasons and circumstances beyond his control, petitioner is entitled to a reconveyance of the properties within a reasonable period. The period of one year from the date of the finality of this judgment as laid down by the Court of Appeals for the exercise of such right by petitioner Dizon appears fair and reasonable and We approve the same.

Since We are not informed of the status of Dizon's loan of ₱93,831.91 with the Philippine National Bank which appears to be on a subsisting basis, it is proper to indicate here how petitioner Dizon may exercise the right to a reconveyance of the properties as herein affirmed, as follows:

(a) Dizon is granted the right to a reconveyance of the properties by reimbursing Gaborro (or his estate) whatever amount(s) the latter has actually paid on account of the *principal* only, of Dizon's loans of ₱38,000.00 and ₱93,831.91 which the DBP and PNB, respectively, *exclusive* of the interests that may have accrued thereon or may have been paid by Gaborro, on the basis of duly certified statements issued by said banks;

(b) Any outstanding balance due on Dizon's original *principal* loan of ₱38,000.00 with the Development Bank of the Philippines assumed by Gaborro and on Dizon's original *principal* loan of ₱93,831.91 with the PNB shall be deducted from the above-fixed reconveyance price payable to Gaborro, in order to enable Dizon to pay off the said mortgage loans directly to the said banks, in accordance with terms mutually agreed upon with them by Dizon;

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(c) In other words, the maximum reconveyance price that Dizon is obligated to pay is the total sum of ₱131,831.91 (the sum total of the principals of his two original loans with the DBP and PNB), and should the amounts due to the said banks exceed this total of ₱131,831.91 (because of delinquent interests and other charges), nothing shall be due Gaborro by way of reimbursement and Dizon will thereupon step into the shoes of Gaborro as owner-mortgagor of the properties and directly arrange with the bar's for the settlement of the amounts still due and payable to them, subject to the right of Dizon to recover such amounts in excess of ₱131,831.91 from Gaborro by writ of execution in this case; and

(d) As already stated, Dizon is not entitled to an accounting of the fruits, harvests and other income received by Gaborro from the land while Gaborro in turn is not entitled to the payment of any interests on any amounts paid by him on account of the principal loans to the banks nor reimbursement of any interests paid by him to the banks.

WHEREFORE, the judgment appealed from is hereby affirmed with the modification that petitioner Dizon is granted the right within one year from finality of this decision to a reconveyance of the properties in litigation upon payment and reimbursement to respondent estate of Alfredo G. Gaborro of the amounts actually paid by Gaborro or his estate on account of the principal only of Dizon's original loans with the Development Bank of the Philippines and Philippine National Bank in and up to the total amount of ₱131,831.91, under the terms and conditions set forth in the preceding paragraph with subparagraphs (a) to (d), which are hereby incorporated by reference as an integral part of this judgment, and upon the exercise of such right, respondent estate shall forthwith execute the corresponding deed of reconveyance in favor of petitioner Dizon and deliver possession of the properties to him. Without pronouncement as to costs.

Teehankee (Chairman), Makasiar, Muñoz Palma, and *Fernandez, JJ.*, concur.