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SECOND DIVISION

[G.R. No. 42108. December 29, 1989]

OSCAR D. RAMOS and LUZ AGUDO, *petitioners, vs.* **HON. COURT OF APPEALS, ADELAIDA RAMOS and LAZARO E. MENESES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SALES; EQUITABLE MORTGAGE; PRESUMPTION UNDER ART. 1602 OF THE CIVIL CODE; EXISTENCE OF ANY ONE CIRCUMSTANCE, SUFFICIENT.** — Settled is the rule that to create the presumption enunciated by Article 1602, the existence of one circumstance is enough. The said article expressly provides therefor "in any of the following cases," hence the existence of any of the circumstances enumerated therein, not a concurrence nor an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract with the right of repurchase is an equitable mortgage.

2. **ID.; CONTRACTS; INTERPRETATION OF; CONSTRUED.** — It is well entrenched principle in the interpretation of contracts that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties the literal meaning of the stipulation shall control but when the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

3. **ID.; SALES; SALE WITH A RIGHT TO REPURCHASE; NOT FAVORED.** — Sales with a right to repurchase, as defined by the Civil Code, are not favored. We will not construe instruments to be sales with a right to repurchase, with the stringent and onerous effects which follow, unless the terms of the document and the surrounding circumstances require it. Whenever, under the terms of the writing, any other construction can fairly and reasonably be made, such construction will be adopted and the contract will be construed as a mere loan unless the court can see that, if enforced according to its terms, it is not an unconscionable one.

4. **ID.; ID.; ID.; REGARDED AS EQUITABLE MORTGAGE WHEN GIVEN AS SECURITY FOR A LOAN.** — The contracts purport

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to be sales with *pacto de retro*; however, since the same were actually executed in consideration of the aforesaid loans said contracts are indubitably equitable mortgages. The rule is firmly settled that whenever it is clearly shown that a deed of sale with *pacto de retro*, regular on its face, is given as security for a loan, it must be regarded as an equitable mortgage.

5. **REMEDIAL LAW; COURT OF FIRST INSTANCE (NOW REGIONAL TRIAL COURT); PROBATE JURISDICTION, EXPLAINED.** — The probate jurisdiction of the former court of first instance or the present regional trial court relates only to matters having to do with the settlement of the estate and probate of wills of deceased persons, and the appointment and removal of administrators, executors, guardians and trustees. Subject to settled exceptions not present in this case, the law does not extend the jurisdiction of a probate court to the determination of questions of ownership that arise during the proceeding. The parties concerned may choose to bring a separate action as a matter of convenience in the preparation or presentation of evidence. Obviously, the approval by the probate court of the conditional sale was without prejudice to the filing of the proper action for consolidation of ownership and/or reformation of instrument in the proper court within the statutory period of prescription.

6. **ID.; ID.; WHEN ACTING AS A CADASTRAL COURT, HAS NO JURISDICTION OVER ACTION FOR CONSOLIDATION OF OWNERSHIP.** — The court of first instance or the regional trial court, acting as cadastral court, acts with limited competence. It has no jurisdiction to take cognizance of an action for consolidation of ownership, much less to issue an order to that effect, such action must have been filed in the former court of first instance, now in the regional trial court, in the exercise of its general jurisdiction. That remedy, and the procedure therefor, is now governed by Rule 64 of the Rules of Court as a special civil action cognizable by the regional trial court in the exercise of original general jurisdiction.

7. **ID.; SPECIAL CIVIL ACTIONS; PETITION FOR CONSOLIDATION OF OWNERSHIP; VENDOR *A RETRO* MUST BE NAMED RESPONDENT.** — In *Crisologo, et al. vs. Centeno, et al.*, we ruled that said Article 1607 contemplates a contentious proceeding wherein the vendor *a retro* must be named

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respondent in the caption and title of the petition for consolidation of ownership and duly summoned and heard. An order granting the vendee's petition for consolidation of ownership, without the vendor a retro being named as respondent, summoned and heard, is a patent nullity for want of jurisdiction of the court over the person of the latter.

8. ID.; CIVIL PROCEDURE; JUDGMENTS; REMEDIES AVAILABLE AGAINST A VOID ORDER OF JUDGMENT. — The questioned order of consolidation issued by the cadastral court, being void for lack of jurisdiction, is in contemplation of law non-existent and may be wholly disregarded. Such judgment may be assailed any time, either directly or collaterally, by means of a separate action or by resisting such judgment in any action or proceeding whenever it is invoked. It is not necessary to take any step to vacate or avoid a void judgment; it may simply be ignored.

9. CIVIL LAW; PRESCRIPTION; PRESCRIPTIVE PERIOD FOR ACTIONS BASED UPON A WRITTEN CONTRACT AND FOR REFORMATION. — On the issue of prescription, in addition to what has been said, the present case, having been filed on February 28, 1960, approximately seven (7) years from the execution of the questioned deeds, was seasonably instituted. The prescriptive period for actions based upon a written contract and for reformation is ten (10) years under Article 1144 of the Civil Code. Such right to reformation is expressly recognized in Article 1365 of the same code.

10. ID.; SALES; RATIONALE OF THE PRESUMPTION OF AN EQUITABLE MORTGAGE. — Article 1602 of the Civil Code is designed primarily to curtail the evils brought about by contracts of sale with right of repurchase, such as the circumvention of the laws against usury and *pactum commissorium*. In the present case before us, to rule otherwise would contravene the legislative intent to accord the vendor *a retro* maximum safeguards for the protection of his legal rights under the true agreement of the parties. The judicial experience in cases of this nature and the rationale for the remedial legislation are worth reiterating, considering that such nefarious practices still persist: "It must be admitted that there are some cases where the parties really intend a sale with right to repurchase. Although such cases are rare, still the freedom of contract must be maintained and respected. Therefore, the

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contract under consideration is preserved, but with adequate safeguards and restrictions. "One of the gravest problems that must be solved is that raised by the contract of sale with right of repurchase or *pacto de retro*. The evils arising from this contract have festered like a sore on the body politic. x x x "It is a matter of common knowledge that in practically all of the so-called contracts of sale with light of repurchase, the real intention of the parties is that the pretended purchase-price is money loaned, and in order to secure the payment of the loan a contract purporting to be a sale with *pacto de retro* is drawn up. It is thus that the provisions contained in Articles 1859 and 1858 of the present Civil Code which respectively prohibit the creditor from appropriating the things given in pledge or mortgage and ordering that said things be sold or alienated when the principal obligation becomes due, are circumvented. "It is high time these transgressions of the law were stopped. It is believed by the Commission that the plan submitted for the solution of the problem will meet with the approval of an enlightened public opinion, and in general, of everyone moved by a sense of justice x x x."

APPEARANCES OF COUNSEL

Godofredo V. Magbiray for petitioners.
Joselito Lim for private respondents.

D E C I S I O N

REGALADO, *J.*:

The instant petition for review on *certiorari* impugns the decision of the Court of Appeals dated October 7, 1975,[1] which affirmed *in toto* the decision of the Court of First Instance of Tarlac in Civil Case No. 4168, entitled "*Adelaida Ramos, et al. vs. Oscar D. Ramos, et al.*," holding that the contracts

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[1] CA-G.R. No. 49354-R. Penned by Justice Emilio A. Gancayco and concurred in by Associate Justices Ricardo C. Puno and B.S. de la Fuente. *Rollo*, 28-37.

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between the parties are not *ventas con pacto de retro* but are equitable mortgages.

Sometime in January, 1959, private respondent Adelaida Ramos borrowed from her brother, petitioner Oscar D. Ramos, the amounts of ₱5,000.00 and ₱9,000.00 in connection with her business transaction with one Flor Ramiro, Fred Naboa and Atty. Ruperto Sarandi involving the recovery of a parcel of land in Tenejeros, Malabon. The said amount was used to finance the trip to Hawaii of Ramiro, Naboa and Atty. Sarandi. As security for said loan, private respondent Adelaida Ramos executed in favor of petitioners two (2) deeds of conditional sale dated May 27, 1959 and August 30, 1959, of her rights, shares, interests and participation respectively over Lot No. 4033 covered by Original Certificate of Title No. 5125 registered in the name of their parents, Valente Ramos and Margarita Denoga, now deceased,[2] and Lot No. 4221 covered by Transfer Certificate of Title No. 10788 then registered in the names of Socorro Ramos, Josefina Ramos and Adelaida Ramos,[3] said properties being of the Cadastral Survey of Paniqui, Tarlac.

Upon the failure of said private respondent as vendor *a retro* to exercise her right of repurchase within the redemption period, aforenamed petitioner filed a petition for consolidation and approval of the conditional sale of Lot No. 4033 in Special Proceedings No. 5174, entitled "Intestate Estate of the late Margarita Denoga,"[4] and a petition for approval of the *pacto de retro* sale of Lot No. 4221 in the former Court of First Instance of Tarlac acting as a cadastral court.[5] On January 22, 1960, the said probate court issued an order with the following disposition:

"WHEREFORE, the deed of CONDITIONAL SALE executed on May 27, 1959, by Adelaida Ramos in favor of spouses Oscar D. Ramos and Luz Agudo, conveying to the latter by way of *pacto de retro*

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[2] Folder of Exhibits, 1-6.

[3] *Ibid.*, 11-13, 15.

[4] *Ibid.*, 7-8.

[5] *Ibid.*, 16-17.

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sale whatever rights and interests the former may have in Lot No. 4033 of the Cadastral Survey of Paniqui, which deed of conditional sale is known as Document No. 14, Page 26, Book VI, Series of 1959, of the notarial register of Notary Public Jose P. Sibal, is hereby approved."[6]

The cadastral Court also issued a similar order dated April 18, 1960, the dispositive portion of which reads:

"WHEREFORE, by way of granting the petition, the Court orders the consolidation of ownership and dominion in petitioners-spouses Oscar D. Ramos and Luz Agudo over the rights, shares and interests of Adelaida Ramos in Lot No. 4221 of the Cadastral Survey of Paniqui, Tarlac, which the latter sold to the former under a *pacto de retro* sale executed in a public instrument known as Document No. 22, Page 28, Book No. VI. Series of 1959, of the Notarial Registry of Notary Public Jose P. Sibal but which she failed to repurchase within the period specified in said Document."[7]

Private respondents had been and remained in possession of these properties until sometime in 1964 when petitioner took possession thereof.

On February 28, 1968, private respondent filed Civil Case No. 4168 with the then Court of First Instance of Tarlac for declaration of nullity of orders, reformation of instrument, recovery of possession with preliminary injunction and damages. The complaint therein alleged that the deeds of conditional sale, dated May 27, 1959 and August 30, 1959, are mere mortgages and were vitiated by misrepresentation, fraud and undue influence and that the orders dated January 22, 1960 and April 18, 1960, respectively issued by the probate and cadastral courts, were null and void for lack of jurisdiction. Petitioners, in their answer to the complaint, specifically deny the allegations of fraud and misrepresentation and interposed as defense the fact that the questioned conditional sales of May 27, 1959 and August 30, 1959 were voluntarily executed by private respondent Adelaida Ramos and truly expressed the intention of the parties; that

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[6] *Rollo*, 7-8.

[7] *Ibid.*, 8.

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the action, if any, has long prescribed; that the questioned orders of January 22, 1960 and April 18, 1960, approving the consolidation of ownership of the lands in question in favor of petitioner were within the jurisdiction of the lower court, in its capacity as a probate court insofar as Lot No. 4033 is concerned, and acting as a cadastral court with respect to Lot No. 4221; and that said lands subject of the conditional sales were in *custodia legis* in connection with the settlement of the properties of the late Margarita Denoga, the predecessor in interest of both petitioners and private respondents.

On January 7, 1970, the court below issued a pre-trial order to the effect that petitioners admit the genuineness and due execution of the promissory notes marked as Exhibits "F" and "F-1" and that the principal triable issue is whether or not the documents purporting to be deeds of conditional sale, marked as Exhibits "B", "B-1" and "G" were in fact intended to be equitable mortgages.[8] In its order dated February 17, 1971, the trial court also declared: "Both parties agreed and manifested in open court the principal obligation in the transaction reflected in Exhibits 'B' and 'B-1' and 'G' is one of loan. The parties differ, however, on the nature of the security described therein."[9]

On May 17, 1971, the court *a quo* rendered a decision the decretal part of which reads:

"WHEREFORE, judgment is hereby rendered:

1) Denying defendants' motion to dismiss of February 23, 1970;

2) Declaring Exhibits 'B', 'B-1' and 'G' as loan transaction secured by real estate mortgages;

3) Annulling and setting aside Exhibits 'D', 'D-1', 'I', 'I-1' and 'I-2';

4) Ordering plaintiffs, jointly and severally to pay (within ninety [90] days from receipt of a copy of this judgment) defendants the sum of ₱5,000.00 specified in Exhibit 'B',

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[8] *Rollo*, 25; Record on Appeal, 64-67.

[9] *Ibid., id.*, 132.

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with interest thereon at the legal rate from November 28, 1959 until full payment together with the sum of ₱9,308.00 specified in Exhibit 'G' with interest there on at the legal rate from December 1, 1959 until full payment, and in default of such payment, let the properties mortgaged under Exhibits 'B', 'B-1' and 'G' be sold to realize the mortgage debt and costs; and

5) Dismissing defendants' counter-claim.

With costs against defendants."[10]

On June 14, 1971, petitioners appealed said decision to the Court of Appeals which, on October 7, 1975; affirmed in all respects the judgment of the trial court. Petitioners' motion for reconsideration of said decision was denied on November 27, 1975.[11]

On January 8, 1976, petitioners filed the petition at bar anchored on the following assignments of errors:

"1. The Hon. Court of Appeals erred in not applying the correct provisions of law interpreting the conditional sales dated May 27, 1959 and August 30, 1959, Exhibits 'B' and 'G' as equitable mortgages.

"2. That as a consequence of its ruling that the conditional sales Exhibits 'B' and 'G', are equitable mortgages, the Hon. Court of Appeals erred in ordering the reformation of the same.

"3. The Honorable Court of Appeals erred in holding that the order dated January 22, 1960, Exhibit C or 2, and the order dated April 18, 1960, Exhibit H or 6, issued by the probate court in Sp. Proc. No. 5174 and by the cadastral court in G.L.R.O. Rec. No. 395, respectively, are null and void for lack of jurisdiction.

"4. The Hon. Court of Appeals erred in not applying the applicable provisions of law on the prescription of action and in not dismissing the complaint fled in the lower court.[12]

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[10] Folder of Original Record on Appeal, 103-104.

[11] *Rollo*, 48.

[12] *Ibid.*, 105; Brief for Petitioners, 8-9.

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We find the petition devoid of merit.

Article 1602 of the Civil Code provides:

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

(1) When the price of a sale with right to repurchase is unusually inadequate;

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

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

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

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

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

The Court of Appeals, in holding that the two (2) deeds purporting to be *pacto de retro* sale contracts are equitable mortgages, relied on the following factual findings of the trial court, to wit:

"Several undisputed circumstances persuade this Court (that) the questioned deeds should be construed as equitable mortgages as contemplated in Article 1602 of the Civil Code, namely: (1) plaintiff vendor remained in possession until 1964 of the properties she allegedly sold in 1959 to defendants; (2) the sums representing the alleged purchase price were actually advanced to plaintiff by way of loans, as expressly admitted by the parties at the hearing of February 17, 1971, reflected in an Order of the same date: and (3) the properties allegedly purchased by defendant Oscar Ramos and his wife have

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never been declared for taxation purposes in their names. Exhibits K, K-1, L end L-1."[13]

Even if we indulge the petitioners in their contention that they are justified in not taking possession of the lots considering that what were allegedly sold to them were only the rights, shares, interests and participation of private respondent Adelaida Ramos in the said lots which were under administration,[14] however, such fact will not justify a reversal of the conclusion reached by respondent court that the purported deeds of sale *con pacto de retro* are equitable mortgages. Such a conclusion is buttressed by the other circumstances catalogued by respondent court especially the undisputed fact that the two deeds were executed by reason of the loan extended by petitioner Oscar Ramos to private respondent Adelaida Ramos and that the purchase price stated therein was the amount of the loan itself.

The above-stated circumstances are more than sufficient to show that the true intention of the parties is that the transaction shall secure the payment of said debt and, therefore, shall be presumed to be an equitable mortgage under Paragraph 6 of Article 1602 herein before quoted. Settled is the rule that to create the presumption enunciated by Article 1602, the existence of one circumstance is enough.[15] The said article expressly provides therefor "in any of the following cases," hence the existence of any of the circumstances enumerated therein, not a concurrence nor an overwhelming number of such circumstances, suffices to give rise to the presumption that the contract with the right of repurchase is an equitable mortgage. As aptly stated by the Court of Appeals:

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[13] *Rollo*, 32-33.

[14] A co-owner has the right to freely sell end dispose of his undivided interest but no right to sell a divided, definite part of the real estate owned in common. The transferee does not acquire any specific portion of the whole until partition. (*Lopez vs. Ilustre,* 5 Phil. 567 [1906]; *Ramos Silos, et al. vs. Ramos. et al.*, 97 Phil. 263 [1955]).

[15] *Santos vs. Duata, et al.,* 14 SCRA 1041(1965); *Capulong, et al. vs. Court of Appeals, et al.*, 130 SCRA 245 (1984).

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"Thus, it may be fairly inferred that the real intention of the parties is that the transactions in question were entered into to secure the payment of the loan and not to sell the property (Article 1602, Civil Code). Under Article 1603 of the Civil Code it is provided that: 'In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.' In this case, we have no doubt that the transaction between the parties is that of a loan secured by said properties by way of mortgage. Hence, we find that Exhibits B and G do not reflect the true and real intention of the parties and should accordingly be reformed and construed as equitable mortgages."[16]

Equally puerile is the other contention of petitioners that respondent court erred in not applying the exclusionary parol evidence rule in ascertaining the true intendment of the contracting parties. The present case falls squarely under one of the exceptions to said rule as provided in then Section 7 of Rule 130, thus:

xxx xxx xxx

(a) Where a mistake or imperfection of the writing or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;"[17]

xxx xxx xxx

Moreover, it is a well entrenched principle in the interpretation of contracts that if the terms thereof are clear and leave no doubt as to the intention of the contracting parties the literal meaning of the stipulation shall control but when the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.[18]

The admission of parol testimony to prove that a deed, absolute in form, was in fact given and accepted as a mortgage does

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[16] *Rollo*, 33-34.

[17] Formerly, Sec. 22, Rule 123, 1940 Rules of Court; now reproduced in Sec. 9, Rule 130, 1989 Revised Rules on Evidence.

[18] Art. 1370, Civil Code; *Labasan, et al. vs. Lacuesta, et al.*, 86 SCRA 16 (1978); *Balatero vs. Intermediate Appellate Court, et al.*, 154 SCRA 530 (1987).

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not violate the rule against the admission of oral evidence to vary or contradict the terms of a written instrument.[19] Sales with a right to repurchase, as defined by the Civil Code, are not favored. We will not construe instruments to be sales with a right to repurchase, with the stringent and onerous effects which follow, unless the terms of the document and the surrounding circumstances require it. Whenever, under the terms of the writing, any other construction can fairly and reasonably be made, such construction will be adopted and the contract will be construed as a mere loan unless the court can see that, if enforced according to its terms, it is not an unconscionable one.[20]

On the faces thereof, the contracts purport to be sales with *pacto de retro*; however, since the same were actually executed in consideration of the aforesaid loans said contracts are indubitably equitable mortgages. The rule is firmly settled that whenever it is clearly shown that a deed of sale with *pacto de retro*, regular on its face, is given as security for a loan, it must be regarded as an equitable mortgage.[21]

With respect to the orders dated January 22, 1960 and April 18, 1960, issued by the Court below acting as a probate court and cadastral court, respectively, the same could not preclude the institution of the case now under review.

A reading of the order of the probate court will show that it is merely an approval of the deed of conditional sale dated May 27, 1959 executed by petitioner Adelaida Ramos in favor of petitioners. There is nothing in said order providing for the consolidation of ownership over the lots allegedly sold to petitioners nor was the issue of the validity of said contract

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[19] *Ignacio vs. Chua Hong, et al.*, 52 Phil. 940 (1929); *Aguinaldo vs. Esteban, et al.*, 135 SCRA 645 (1985); *Serrano vs. Court of Appeals, et al.*, 139 SCRA 179 (1985).

[20] *Padilla vs. Linsangan*, 19 Phil. 65 (1911); *Aquino vs. Deala*, 63 Phil. 582 (1936).

[21] *Ignacio vs. Chua Hong, supra; Capulong vs. Court of Appeals, et al., ante.*

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discussed or resolved therein. "To give approval" means in its essential and most obvious meaning, to confirm, ratify, sanction or consent to some act or thing done by another. [22] The approval of the probate court of the conditional sale is not a conclusive determination of the intrinsic or extrinsic validity of the contract but a mere recognition of the right of private respondent Adelaida Ramos as an heir, to dispose of her rights and interests over her inheritance even before partition.[23] As held in *Duran, et al., vs. Duran,*[24] the approval by the settlement court of the assignment *pendente lite*, made by one heir in favor of the other during the course of the settlement proceedings, is not deemed final until the estate is closed and said order can still be vacated, hence the assigning heir remains an interested person in the proceeding even after said approval.

Moreover, the probate jurisdiction of the former court of first instance or the present regional trial court relates only to matters having to do with the settlement of the estate and probate of wills of deceased persons, and the appointment and removal of administrators, executors, guardians and trustees. Subject to settled exceptions not present in this case, the law does not extend the jurisdiction of a probate court to the determination of questions of ownership that arise during the proceeding. The parties concerned may choose to bring a separate action as a matter of convenience in the preparation or presentation of evidence.[25] Obviously, the approval by the probate court of the conditional sale was without prejudice to the filing of the proper action for consolidation of ownership and/or reformation of instrument in the proper court within the statutory period of prescription.

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[22] *State vs. Rhein,* 127 N.W., 1079, 1081; 149 Iowa, 76; 3A Words and Phrases, Permanent Edition, 500.

[23] Arts. 493 and 1088, Civil Code; *Jakosalem vs. Rafols, et al.,* 73 Phil. 628; *De Borja, et al. vs. Vda. de Borja,* 46 SCRA 755 (1972); *Go Ong vs. Court of Appeals,* 154 SCRA 271 (1987).

[24] 20 SCRA 279 (1967).

[25] *Vda. de Mañalac vs. Ocampo, et al.,* 73 Phil. 661 (1942).

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The same jurisdictional flaw obtains in the order of consolidation issued by the cadastral court. The court of first instance or the regional trial court, acting as cadastral court, acts with limited competence. It has no jurisdiction to take cognizance of an action for consolidation of ownership, much less to issue an order to that effect, such action must have been filed in the former court of first instance, now in the regional trial court, in the exercise of its general jurisdiction. That remedy, and the procedure therefor, is now governed by Rule 64 of the Rules of Court as a special civil action cognizable by the regional trial court in the exercise of original general jurisdiction.

Antecedent thereto, Article 1607 of the Civil Code provided for consolidation as follows:

"In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

Hence in *Crisologo, et al. vs. Centeno, et al.*,[26] we ruled that said Article 1607 contemplates a contentious proceeding wherein the vendor *a retro* must be named respondent in the caption and title of the petition for consolidation of ownership and duly summoned and heard. An order granting the vendee's petition for consolidation of ownership, without the vendor *a retro* being named as respondent, summoned and heard, is a patent nullity for want of jurisdiction of the court over the person of the latter.

The questioned order of consolidation issued by the cadastral court, being void for lack of jurisdiction, is in contemplation of law non-existent and may be wholly disregarded. Such judgment may be assailed any time, either directly or collaterally, by means of a separate action or by resisting such judgment in any action or proceeding whenever it is invoked.[27] It is not necessary to

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[26] SCRA 48 (1948).

[27] *Banco Español-Filipino vs. Palanca*, 37 Phil. 921 (1918); *Gomez vs. Concepcion, etc., et al.*, 47 Phil. 717 (1925); *Ang Lam vs. Rosillosa et al.*, 86 Phil. 447 (1950).

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take any step to vacate or avoid a void judgment; it may simply be ignored.[28]

On the issue of prescription, in addition to what has been said, the present case, having been filed on February 28, 1960, approximately seven (7) years from the execution of the questioned deeds, was seasonably instituted. The prescriptive period for actions based upon a written contract and for reformation is ten (10) years under Article 1144 of the Civil Code. Such right to reformation is expressly recognized in Article 1365 of the same code.[29]

Article 1602 of the Civil Code is designed primarily to curtail the evils brought about by contracts of sale with right of repurchase, such as the circumvention of the laws against usury and *pactum commissorium*.[30] In the present case before us, to rule otherwise would contravene the legislative intent to accord the vendor a retro maximum safeguards for the protection of his legal rights under the true agreement of the parties. The judicial experience in cases of this nature and the rationale for the remedial legislation are worth reiterating, considering that such nefarious practices still persist:

"It must be admitted that there are some cases where the parties really intend a sale with right to repurchase. Although such cases are rare, still the freedom of contract must be maintained and respected. Therefore, the contract under consideration is preserved, but with adequate safeguards and restrictions.

"One of the gravest problems that must be solved is that raised by the contract of sale with right of repurchase or *pacto de retro*. The evils arising from this contract have festered like a sore on the body politic. x x x

x x x *x x x* *x x x*

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[28] 49 C.J.S. 879-880.

[29] *Conde, et al. vs. Cuenca, et al.*, 99 Phil. 1056 (1956); *Seno vs. Mangubat,* 156 SCRA 113 (1987).

[30] *Balatero vs. Intermediate Appellate Court, et al., ante.*

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"It is a matter of common knowledge that in practically all of the so-called contracts of sale with light of repurchase, the real intention of the parties is that the pretended purchase-price is money loaned, and in order to secure the payment of the loan a contract purporting to be a sale with *pacto de retro* is drawn up. It is thus that the provisions contained in articles 1859 and 1858 of the present Civil Code which respectively prohibit the creditor from appropriating the things given in pledge or mortgage and ordering that said things be sold or alienated when the principal obligation becomes due, are circumvented.

"Furthermore, it is well-known that the practice in these so-called contracts of sale with *pacto de retro* is to draw up another contract purporting to be a lease of the property to the supposed vendor, who pays in money or in crops a so-called rent. It is, however, no secret to anyone that this simulated rent is in truth and in fact interest on the money loaned. In many instances, the interest is usurious. Thus, the usury law is also circumvented.

"It is high time these transgressions of the law were stopped. It is believed by the Commission that the plan submitted for the solution of the problem will meet with the approval of an enlightened public opinion, and in general, of everyone moved by a sense of justice.

"During the deliberations of the Commission the question arose as to whether the contract of purchase with *pacto de retro* should be abolished and forbidden. On first impression, this should be done, but there is every reason to fear that in such a case the usurious money-lenders would demand of the borrowers that, although the real agreement is one of loan secured with a mortgage, the instrument to be signed should purport to be an absolute sale of the property involved. Should this happen, the problem would become aggravated. Moreover, it must be admitted that there are some cases where the parties really intend a sale with right to repurchase. Although such cases are rare, still the freedom of contract must be maintained and respected. Therefore, the contract under consideration is preserved in the Project of Civil Code, but with adequate safeguards and restrictions."[31]

WHEREFORE, the instant petition is hereby *DENIED* and the assailed decision of the Court of Appeals is hereby *AFFIRMED*.

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[31] Report of the Code Commission, 61-64.

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SO ORDERED.

Melencio-Herrera (Chairman), Paras, Padilla, and *Sarmiento, JJ.*, concur.

SECOND DIVISION

[G.R. No. 58122. December 29, 1989]

MOBIL OIL PHILIPPINES, INC., *petitioner, vs.* **THE HONORABLE COURT OF APPEALS and FERNANDO A. PEDROSA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT GENERALLY NOT DISTURBED ON APPEAL.** — We find the factual findings of the Court of Appeals affirming those of the trial court as a fair, reasonable and just conclusion well grounded on the documentary and testimonial evidence presented in court which were not convincingly disputed by petitioner Mobil Oil Philippines. As We found nothing capricious, whimsical, speculative or arbitrary in the conclusions arrived at, the same cannot be disturbed on appeal.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; VALUE OF THE CURRENCY AT THE TIME OF THE ESTABLISHMENT OF THE OBLIGATION; MAY NOT BE APPLIED WITHOUT A PROPER DECLARATION OF THE EXISTENCE OF EXTRAORDINARY INFLATION OR DEFLATION.** — On the second issue for adjustment claims, private respondent has no basis in contract or in law. Parenthetically, the principle We laid down in the case of *Commissioner of Public Highways vs. Burgos* can be applied here, to wit: "x x x *an agreement is needed* for the effects of an extraordinary inflation to be taken into