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FIRST DIVISION

[G.R. No. L-46307. October 9, 1985]

PACIENCIA VIZCONDE SERRANO, *petitioner, vs.* **HONORABLE COURT OF APPEALS, LEOCADIO MACARAYA and MAXIMO C. FERNANDEZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; COMPUTATION OF PERIOD OF APPEAL TO THE SUPREME COURT.**— The respondents err in their mode of computing the period before finality of judgment. Section 1 of Rule 45 of the Rules of Court gives a party 15 days from the denial of a motion for reconsideration by the appellate court to come to the Supreme Court. These 15 days do not include the number of days that lapse from notice of judgment to the filing of the motion for reconsideration. The 15-day period starts anew from the notice of the motion's denial.

2. **ID.; ID.; ID.; EVEN IF A PETITION FOR REVIEW IS FILED A FEW DAYS LATE, THE SUPREME COURT MAY RELAX THE STRINGENT APPLICATION OF TECHNICAL RULES WHERE STRONG CONSIDERATIONS OF SUBSTANTIAL JUSTICE ARE MANIFEST IN THE PETITION.**— And even assuming that a petition for review is filed a few days late, where strong considerations of substantial justice are manifest in the petition, this Court may relax the stringent application of technical rules in the exercise of our equity jurisdiction. In addition to the basic merits of the main case, such a petition usually embodies justifying circumstances which warrant our heeding the petitioner's cry for justice, inspite of the earlier negligence of counsel.

3. **ID.; ID.; ID.; WHERE CONCLUSIONS OF THE COURT OF APPEALS ON FACTUAL MATTERS ARE CONTRARY TO THOSE OF THE TRIAL COURT, A MINUTE SCRUTINY BY THE SUPREME COURT IS IN ORDER AND RESORT TO PROVEN EVIDENCE BECOMES NECESSARY.**— In the case at bar, the conclusions of the Court of Appeals on factual matters are contrary to those of the trial court. A minute scrutiny by

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this Court is in order and resort to duly proven evidence becomes necessary.

4. CIVIL LAW; CONTRACTS; CONTRACT BETWEEN THE PARTIES WAS ACTUALLY A DEED OF SALE *PACTO DE RETRO* BUT MADE TO APPEAR AS AN ABSOLUTE DEED OF SALE; CASE AT BAR.— The records show that the contract between the parties was actually a deed of sale *pacto de retro* which was made to appear as an absolute deed of sale. In the instant case, the petitioner was made to execute a document entitled "Deed of Absolute Sale" in favor of respondent Macaraya. On the same date, Macaraya executed an "Undertaking" giving the vendor the right to repurchase the lot within two months from date. Significantly, the same Elpidia C. Lagura who signed as witness to the deed of absolute sale was also a witness to the undertaking. As stated in *Capulong v. Court of Appeals* (130 SCRA 245), the intent to circumvent the Civil Code provision discouraging *pacto de retro* sales is very apparent.

APPEARANCES OF COUNSEL

Guillermo Jumamil and Tanjili Law Office for petitioner.
Gregorio Batiller for private respondents.

D E C I S I O N

GUTIERREZ, JR., *J.*:

This is a case which involves the true nature of the purported contract of sale executed by petitioner Paciencia Vizconde Serrano in favor of private respondent Leocadio Macaraya.

The background facts were summarized by the then Court of Appeals as follows:

"The litigated realty is more or less 384 square meters situated in the municipality of Mati, Davao Province, originally encompassed in plaintiff-appellee's TCT No. T-438 (Exh. D), then under lease, to expire last January 1971, with one Lorenzo Tan, who subleased the same to the Angelo Leonar Enterprises & Co., Inc., in actual possession thereof for a monthly rental of ₱500.00.

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"On January 17, 1969, Mrs. Serrano executed a notarial document (Exh. A) purporting to convey the said realty by way of absolute sale to defendant Leocadio Macaraya for the price of ₱12,000.00. In a separate private document of even date (Exh. 1) Mrs. Serrano was given by Macaraya two months therefrom to repurchase her property during which period she was allowed to collect the monthly rentals. Thereafter rentals were collected by Macaraya himself. (1. tsn., 41-42)

"Mrs. Serrano did not re-purchase. The property in question was burdened with unpaid taxes which had accumulated for many years, and pending the determination of the exact amount thereof by the Municipal Treasurer of Mati, Macaraya had his ownership rights in TCT No. T-438 on September 12, 1969 (Exhs. E & 2) of which fact Mrs. Serrano was duly notified on even date (Exh. 2-A).

"On September 29, 1969, Macaraya paid the tax arrearages in its entirety, including surcharges, for the period of 11 years from 1958 to 1969, inclusive, in the total amount of ₱760.41 (Exh. 3). Thereafter, the sale to Macaraya was registered and on October 3, 1969, TCT No. 15704 (Exh. F) was consequently issued in his name.

"On October 21, 1969, the Macaraya spouses, Leocadio and Dorotea, jointly executed a deed of absolute sale (Exh. H) of the said property to Maximo C. Fernandez, which transaction was in effect one of *dacion en pago*, the ₱20,000.00 consideration therefor was applied as partial payment for the Macaraya's outstanding indebtedness to the vendee Fernandez who was consequently issued TCT No. T-15789 (Exh. G). There is now pending in the Municipal Court of Mati, Davao Oriental ejectment case No. 366, lodged by Maximo C. Fernandez against the lessee Angelo Leonar Enterprises & Co. In the meantime that the present litigation has not been resolved with finality the parties in the said ejectment case agreed to have the monthly rentals deposited as they fall due in the said municipal court."

On April 18, 1970, petitioner Serrano filed with the then Court of First Instance of Davao Oriental, Branch X, a complaint against respondents Leocadio Macaraya and Maximo Fernandez for declaration of nullity of contract, cancellation of titles, reconveyance and damages. She alleged that the contract of sale between her and Macaraya was fictitious and simulated. She averred that it did not reflect their true agreement, which was a mere transaction of loan in the amount of ₱12,000.00.

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She further alleged that she actually received only ₱10,000.00 and that the difference of ₱2,000.00 was added to the consideration to conceal the usurious monthly interest of ₱1,000.00. She claimed to be a victim of fraud perpetrated by Macaraya and Fernandez.

On the other hand, respondents Macaraya and Fernandez denied the imputation of fraud and insisted upon the regularity of the assailed transactions. Fernandez, who never attended trial but sent his deposition, claimed good faith in purchasing the property in question and denied knowledge of any flaw in the title of Macaraya.

On May 29, 1971, the lower court rendered the following decision:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering:

"1) Defendants to surrender to the Register of Deeds of Davao Oriental, Transfer Certificate of Title No. T-15789 in the name of Maximo C Fernandez:

"2) The Register of Deeds of Davao Oriental to cancel Transfer Certificate of Title T-15789 in the name of Maximo C. Fernandez and to re-issue a new one in lieu thereof in the name of PACIENCIA VIZCONDE SERRANO: and

"3) Defendants to pay moral damages in the sum of ₱2.000.00, attorney's fees in the sum of ₱1.000.00 and the costs of the suit."

On appeal to the Court of Appeals, the trial court's decision was totally reversed in the following manner:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the decision appealed from is set aside and the complaint dismissed. The title certificate TCT No. T-15789 of defendant-appellant Maximo C. Fernandez is hereby declared valid and consequently he is likewise declared the absolute owner of the herein litigated property."

The Court of Appeals held that "the Deed of Sale" identified as Exhibit "A" is really a contract of sale with all the required legal formalities and therefore has in its favor the presumption of regularity and nothing but the most convincing evidence will

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prevail in order to overthrow its probative value with respect to the transactions recorded therein." The appellate court stated that even if Exhibit "A" is void, the property subject of the conflict has been transferred to a third person, the other defendant Maximo C. Fernandez, and, therefore, the nullity of Exhibit "A", would be of no moment and cannot adversely affect the rights of the said defendant-transferee.

On November 26, 1976, the petitioner filed a motion for reconsideration and rehearing of the decision of the Court of Appeals. The motion was denied in a resolution dated January 19, 1977. On February 23, 1977, the petitioner filed with the same court a motion for new trial based on newly discovered evidence which would prove that respondent Fernandez was not a buyer in good faith. This motion was denied by the Court of Appeals in its resolution dated April 19, 1977.

Petitioner Serrano went to this Court in a petition for *certiorari* with the following assignments of errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR IN HOLDING THAT EXHIBIT "A" WAS REALLY A CONTRACT OF SALE WITHOUT CONSIDERING EXHIBIT "I" AND OTHER CIRCUMSTANCES.

II

THE HONORABLE COURT OF APPEALS ERRED IN NOT DECLARING THAT EXHIBIT "A" TOGETHER WITH EXHIBIT "I" IS A *PACTO DE RETRO* SALE AND CONSEQUENTLY ERRED IN NOT ALLOWING PETITIONER TO REPURCHASE THE LITIGATED PROPERTY ACCORDING TO LAW.

III

THE HONORABLE COURT OF APPEALS ERRED IN CONSIDERING DEPOSITION (EXHIBIT 1, FERNANDEZ) IN ITS DECISION CONTRARY TO LAW.

IV

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PRESUMPTION OF GOOD FAITH WAS NOT OVERCOME

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BY PETITIONER AND IN DECLARING THAT RESPONDENT FERNANDEZ HAS A VALID TITLE OVER THE LITIGATED PROPERTY.

V

THE HONORABLE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND REHEARING AND THE SUBSEQUENT MOTION FOR NEW TRIAL WITHOUT VALID GROUNDS STATED THEREIN.

Even as respondents Macaraya and Fernandez urge this Court to affirm the Court of Appeals decision on its merits, they raise as a preliminary issue the timeliness of the filing of the petition. Our examination of the records of this case shows that the arguments on this issue have no merit.

We note that the respondents have deducted the number of days between the petitioner's notice of the decision and the date she filed a motion for reconsideration from the number of days given her to come to us on a petition for review or to take such other action before judgment becomes final and executory.

The respondents err in their mode of computing the period before finality of judgment. Section 1 of Rule 45 of the Rules of Court gives a party 15 days from the denial of a motion for reconsideration by the appellate court to come to the Supreme Court. These 15 days do not include the number of days that lapse from notice of judgment to the filing of the motion for reconsideration. The 15-day period starts anew from the notice of the motion's denial.

And even assuming that a petition for review is filed a few days late, where strong considerations of substantial justice are manifest in the petition, this Court may relax the stringent application of technical rules in the exercise of our equity jurisdiction. In addition to the basic merits of the main case, such a petition usually embodies justifying circumstances which warrant our heeding the petitioner's cry for justice, inspite of the earlier negligence of counsel.

It bears repeating that rules of procedure are not to be applied rigidly (*Tan v. Director of Forestry*, 125 SCRA 302). In a

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number of cases, this Court in the exercise of equity jurisdiction decided to disregard technicalities in order to resolve the case on its merits based on the evidence. (See *St. Peter Memorial Park, Inc. v. Cleofas*, 121 SCRA 287; *Helmuth, Jr. v. People of the Philippines*, 112 SCRA 573). As we ruled in the case of *Calasiao Farmers Cooperative Marketing Association, Inc. v. Court of Appeals* (106 SCRA 630, 637):

"Dismissal of appeals based on purely technical grounds is frowned upon as the policy of the Courts is to encourage hearing of appeals on the merits. (*Gregorio v. Court of Appeals*, 72 SCRA 120 [1976]) Rules of procedure are intended to promote, not to defeat substantial justice, and therefore, they should not be applied in a very rigid and technical sense."

In the case at bar, the conclusions of the Court of Appeals on factual matters are contrary to those of the trial court. A minute scrutiny by this Court is in order and resort to duly proven evidence becomes necessary (*Legaspi v. Court of Appeals*, 69 SCRA 360; and *Tolentino v. De Jesus*, 56 SCRA 167).

Was the contract entered into between petitioner Serrano and respondent Macaraya an absolute sale as found by the Court of Appeals or an equitable mortgage as alleged by the petitioner?

The records show that the contract between the parties was actually a deed of sale *pacto de retro* which was made to appear as an absolute deed of sale.

This Court has ruled in *Shell Co. of the Phils. Ltd. v. Firemen's Ins. Co. of Newark, N.J., et al.* (100 Phil. 757) that:

"To determine the nature of a contract courts do not have or are not bound to rely upon the name or title given it by the contracting parties, should there be a controversy as to what they really had intended to enter into, but the way the contracting parties do or perform their respective obligations stipulated or agreed upon may be shown and inquired into, and should such performance conflict

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with the name or title given the contract by the parties, the former must prevail over the latter."

That a transaction was really one of loan with security, and therefore a mortgage, may be shown by the aid of surrounding circumstances, and parol evidence is competent in that respect, This rule has been accepted for many generations. The difficulty lies in its application, for many factors are to be considered, none of them conclusive in itself, but each to be considered in its company. (1 Glenn, Mortgages, 59-60 [1943]).

In the instant case, the petitioner was made to execute a document entitled "Deed of Absolute Sale" in favor of respondent Macaraya. On the same date, Macaraya executed an "Undertaking" giving the vendor the right to repurchase the lot within two months from date. Significantly, the same Elpidia C. Lagura who signed as witness to the deed of absolute sale was also a witness to the undertaking. As stated in *Capulong v. Court of Appeals* (130 SCRA 245), the intent to circumvent the Civil Code provision discouraging *pacto de retro* sales is very apparent. In the *Capulong* case, we distinguished between these types of contracts and the contract in *Villarica v. Court of Appeals* (26 SCRA 189). We stated:

"There is one important factor that differentiates the *Villarica* case from the instant petition. The document granting the vendors therein an option to buy back the property was executed six (6) days after the execution of the deed of sale whereas in the instant case the option to buy was embodied in a document executed at the same time that the questioned deed of sale was executed. The option to buy in *Villarica* case was interpreted to be only an afterthought. On the other hand, the intent of the parties to circumvent the provision discouraging *pacto de retro* sales is very apparent in the instant case. The two contracts, the deed of sale and the document embodying the option to repurchase were prepared, signed, and notarized on the same day. The respondent court should have seen through a transparent effort to make it appear that the two transactions were not intimately related but distinct and separate as in the *Villarica* case. This should have put the court on guard considering the other circumstances of the case from which no other conclusion could be derived except that the deed of absolute sale and the document

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giving the right to repurchase were, in fact, only one transaction of sale *pacto de retro* which must be construed as an equitable mortgage. x x x"

Since the sale of the lot was one of *pacto de retro*, the question before us now is whether or not it should be treated as an equitable mortgage. The Civil Code provides:

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

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

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

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

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

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

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

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.

"ART. 1603. In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.

"ART. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale."

We find the amount of ₱12,000.00 inadequate for a 384 square meter lot in the *poblacion* of Mati, Davao which the trial court found to be "a very valuable piece of commercial property." This conclusion is supported by the fact that barely ten months after the questioned transaction between the petitioner and

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respondent Macaraya, it was transferred to respondent Fernandez (Exhibit H), who admitted that it was good bargain, for a consideration of ₱20.000.00. The records also show that on June 2, 1970 or another seven months later, (Exhibit "4"), the Angelo Leonar Enterprises, Inc. offered to respondent Macaraya their willingness to purchase the same lot for ₱30.000.00. There was no showing of any reasons why the value of the lot appreciated so rapidly. What was admitted in the pleadings and testimonies of both parties was the fact that petitioner Serrano "needed the money." In *Labasan v. Lacuesta* (86 SCRA 16), this Court quoted the Lord Chancellor in *Vernon v. Bethell* (2 Eden. - 13) thus: "Necessitous men are not, truly speaking, free men: but to answer a present emergency, will submit to any terms that the crafty may impose upon them."

In the trial proceedings below, we also note that respondent Macaraya had not been consistent in rebutting the allegation that the petitioner had paid him ₱1.000.00 monthly as interest for the amount loaned.

It was also admitted by respondent Macaraya that petitioner Serrano continued receiving rentals from Angelo Leonar Enterprises, Inc., the lessee of the subject property for at least six months after the execution of the contract of sale dated January 17, 1969 (2 tsn., p. 24). The collection of rentals ceased only when respondent Fernandez sued the lessee for ejectment and the rentals were subsequently ordered to be deposited in the municipal court of Mati pending the resolution of this case. This Court finds it strange that respondent Macaraya would allow petitioner Serrano to receive the fruits of the subject property several months after he acquired absolute ownership of the same. This is contrary to the principle of ownership. As of the filing of the petition and presumably up to the present, the petitioner and supposed vendor in an absolute sale has retained possession of the disputed property.

The last issue refers to the petitioner's allegations that respondent Maximo C. Fernandez was not a purchaser in good faith.

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The trial court stated in its decision that it had serious doubts on the authenticity of the deed of sale executed by Macaraya in favor of his co-respondent Maximo C. Fernandez. The appellate court, however, brushed aside the contentions that Fernandez was a mere dummy in a simulated sale and ruled that the presumption of good faith was not overcome by clear cut and positive evidence to the contrary.

We sustain the factual finding of the trial court.

The trial court emphasized in its decision that the supposed buyer in good faith and current owner never showed the slightest interest in the litigation involving the cancellation of his title and the reversion of the lot he purchased from Macaraya to the original vendor. The court stated:

"It was the defendant Macaraya, who has from the inception of this case, manifested intense interest in the outcome of the same so much so that no one will doubt that he is indeed and truly the owner of the lot in question."

Fernandez did not appear at the trial. His deposition taken in Cebu City at the *Macaraya Building*, Colon Street was introduced in evidence by the respondents. Fernandez admitted that he has never been to Mati, Davao Oriental and he has never seen the lot sold to him by Macaraya. He lives in San Roque, Talisay, Cebu. He never bothered to find out what was sold to him for ₱20,000.00 in 1969, whether or not the land was really worth that much or that it even existed. Maximo C. Fernandez was then a 64-year old man who worked as a tailor for a living.

The records show that the deed of sale was executed by petitioner Serrano in favor of Macaraya on January 17, 1969. It took Macaraya until October 3, 1969 to have the transfer certificate of title — T-15704 - registered in his name.

The deed of sale in favor of Fernandez was executed in Cebu City on October 21, 1969. Two days later, October 23, 1969, the new title, TCT No. 15704 was already registered in

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the Registry of Davao in the name of Fernandez, who was all the time in Cebu.

It is also highly unusual that the transaction between Macaraya and Fernandez involved no transfer of money. The sale was allegedly one of *dacion en pago*. The Macarayas, who appear to be well to do, "sold" the ₱20,000.00 lot to Fernandez, a poor tailor, as "partial payment" for the Macaraya's outstanding indebtedness to the vendee.

The fifth assignment of error questions the respondent court's denial of the petitioner's motion for rehearing or new trial. The petitioner wanted to introduce into the records the certification of the Talisay, Cebu treasurer that respondent Fernandez has no property listed in his name in that municipality and the certification of the Bureau of Internal Revenue Regional Director for Central Visayas that respondent Fernandez did not file any income tax returns for the years 1968 through 1972.

We see no need to pass upon this issue. There is more than enough evidence in the records to affirm the trial court's finding that Fernandez was not a buyer in good faith.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals is REVERSED and SET ASIDE. The contract between the petitioner and Leocadio Macaraya being one of equitable mortgage, Transfer Certificate of Title No. T-15789 in the name of Maximo C. Fernandez is ordered CANCELLED and a new one issued in the petitioner's name.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, De la Fuente, and *Patajo, JJ.*, concur.