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Finally, petitioners cannot seek suspension of this case pending resolution of the case for annulment of transfer and reconveyance of title before the RTC. An action for reconveyance of property or *accion reivindicatoria* has no effect on ejectment suits regarding the same property. Neither do suits for annulment of sale, or title, or document affecting property operate to abate ejectment actions respecting the same property.[26]

This case involves sisters and one of the sister's sons. However, we are constrained to affirm the Court of Appeals' Decision, mindful of the circumstances of this case. The alleged intended sale of the subject property cannot likewise justify suspending this case. We found no factual basis for this allegation, which was not even brought before the MeTC and RTC, but was only brought to the Court of Appeals in petitioners' motion for reconsideration.

WHEREFORE, the petition is *DENIED*. The Decision dated August 30, 2002 and Resolution dated January 6, 2003 of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Ynares-Santiago, Carpio, and *Azcuna, JJ.,* concur.

THIRD DIVISION

[G.R. No. 156705. September 30, 2005]

SOCORRO TAOPO BANGA, *petitioner, vs*. **Spouses JOSE and EMELINE BELLO,** *respondents*.

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[26] *Hilario v. Court of Appeals*, G.R. No. 121865, 7 August 1996, 260 SCRA 420, 427-428. See also *Barba v. Court of Appeals*, G.R. No. 126638, 6 February 2002, 376 SCRA 210, 220-221.

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SYLLABUS

1. **CIVIL LAW; SALES; EQUITABLE MORTGAGE; THE DECISIVE FACTOR IN EVALUATING SUCH AGREEMENT IS THE INTENTION OF THE PARTIES; RATIONALE.—** But more revealing of the true intention of the parties is the undisputed relationship of Nelson and respondents as debtor and creditors, respectively, which, together with the circumstances mentioned above, draws this Court to affirm the trial court's ruling that the deed of absolute sale was executed to serve as additional security for the loan extended to Nelson. As *Reyes v. Court of Appeals* instructs: In determining whether a deed absolute in form is a mortgage, the court is not limited to the written memorial of the transaction. *The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding.* x x x Debtors usually find themselves in an unequal position when bargaining with their creditors, and will readily sign onerous contracts just to have the money they need. Necessitous men are not always free, in that to answer a pressing emergency, they will submit to any terms that the crafty may impose on them. This is precisely the evil that the above-quoted provision on equitable mortgage seeks to prevent.

2. **ID.; DAMAGES; EXEMPLARY DAMAGES; WHEN AWARD THEREOF HAS NO BASIS.—** While petitioner did pray for the award of moral damages in her complaint and even testified on her entitlement to it, the trial court made no such award in its decision and petitioner did not assail the same by way of a motion for reconsideration of the decision or by appeal before the appellate court. There is thus no basis for the award of exemplary damages.

3. **REMEDIAL LAW; ACTIONS; APPEALS; WHEN REMAND OF THE CASE TO THE TRIAL COURT IS DEEMED PROPER; APPLICATION IN CASE AT BAR.—** The logical consequence of a finding that a deed of sale is actually one of equitable mortgage is to decree the "vendor"-debtor to pay his

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outstanding loan to the "vendee"-creditor. As priorly mentioned, Nelson alleged in his Answer that he had paid his mortgage obligation to respondents. The trial court, however, despite ruling that the deed of sale was actually an equitable mortgage, did not pass upon his claim. The trial court's judgment is thus *incomplete,* as in fact in respondents appeal to the appellate court, they assigned as one of the errors of the trial court its failure to order petitioner and her husband Nelson to pay the loan. A remand of the case to the trial court is thus in order, only for the purpose of determining whether the mortgage obligation had indeed been settled, and if not, how much should Nelson pay respondents to settle the same.

APPEARANCES OF COUNSEL

Cabeza & Associates Law Offices for petitioner.
Lamberto Nanquit for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Spouses Socorro Taopo Banga and Nelson Banga (Nelson) acquired, among other things, a real property located at 459 Boni Avenue, Mandaluyong City (the property) covered by Transfer Certificate of Title (TCT) No. 62530.[1]

On June 19, 1987, Nelson, as mortgagor, with the consent of his wife-herein petitioner Socorro Taopo Banga, executed a Deed of Real Estate Mortgage[2] in favor of respondent Jose V. Bello V (Jose) over the property as security for a loan in the amount of ₱200,000.00 extended by Jose to Nelson.

On July 28, 1987, Nelson and Jose executed an "Amendment to the Real Estate Mortgage"[3] increasing the loan to ₱300,000.00.

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[1] Records at 9.

[2] Exhibit "G", Records at 257-258.

[3] Exhibit "H", Records at 259-260.

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Still later or on September 1, 1989, Nelson and Jose executed a "Second Amendment of Real Estate [Mortgage]"[4] which further increased the loan to *₱500,000.00*.

It appears that a Deed of Absolute Sale[5] was executed by Nelson purportedly on December 11, 1989 and with the marital consent of petitioner, covering the property in favor of Jose for a consideration of *₱300,000.00*. TCT No. 62530 was later cancelled and in its stead TCT No. 3294[6] was issued in the name of Jose.

The real estate mortgage, its two amendments, as well as the Deed of Absolute Sale were notarized by one Teodorico L. Baltazar (Baltazar) in the presence of two witnesses.

Petitioner later filed a complaint[7] before the Regional Trial Court (RTC) of Pasig, for declaration of nullity with damages against her husband Nelson from whom she claims to have been separated since 1989 and herein respondents spouses Jose and Emeline Bello, alleging that Nelson and respondent Jose, "in criminal conspiracy with notary public [Baltazar] and two (2) instrumental witnesses, criminally made it appear that . . . [petitioner] consented to the absolute sale . . ."; that the signature in the deed of sale appearing above the name "Socorro T. Banga" is not hers; and that she never appeared before Baltazar on December 11, 1989 or any date thereafter to acknowledge having participated in the execution of the deed of absolute sale.

And petitioner questioned as "unconscionably low" the consideration of ₱300,000.00 for the sale of the property which is situated in a commercial district.

Petitioner thus prayed that judgment be rendered:

1. declaring void the "Deed of Absolute Sale" of December 11, 1989;

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[4] Exhibit "I", Records at 261-262.

[5] Exhibit "C", Records at 11-12.

[6] Exhibit "D", Records at 13.

[7] Records at 1-8.

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2. declaring void and/or canceling Transfer Certificate of Title No. 3294 (in the names of [respondents]-spouses Bello) from the Registry of Deeds of Mandaluyong, Metro Manila;

3. ordering . . . Nelson F. Banga, Jose V. Bello V and Emeline B. Bello solidarily liable to pay in favor of herein [petitioner] the following sums of money:

   a. ₱500,000.00 as moral damages;

   b. Exemplary damages, to be fixed by this Honorable Court, but no less than ₱50,000.00;

   c. ₱200,000.00, as and for attorney's fees;

   d. ₱50,000.00, as litigation expenses;

   e. Costs of suit.

x x x x x x x x x

(Italics supplied)

In their Answer with Counterclaim,[8] herein respondents spouses Bello alleged that petitioner has no cause of action against them; that the deed of sale was personally and voluntarily executed by petitioner and her husband in the presence of the witnesses before the notary public and her signature appearing thereon is genuine and authentic; and that the consideration for the sale is the fair and reasonable value of the property as it is "not only based on the amount provided in the deed of sale but [on] considerations in (*sic*) real estate mortgage and amendments [thereto] . . .."

In Nelson's Answer with Counterclaim and Crossclaim[9] against Jose, he claimed that, among other things, the deed of sale was actually a third amendment to the mortgage which he and petitioner executed and was actually an equitable mortgage for which no consideration was involved; he had already paid in full their principal indebtedness to respondents in the amount of ₱652,000.00, plus the amount of ₱187,500.00, in the form

[8] *Id.* at 22-26.

[9] *Id.* at 31-37.

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of guarantee checks; and the cancellation of TCT No. 62530 was done without his consent and against his actual and real agreement with respondents.

In its Pre-Trial Order of November 28, 1990,[10] Branch 71 of the Pasig RTC stated the issues of the case as follows:

1) Whether the deed of sale is binding, valid, effective and genuine;

2) Whether the said deed of sale expresses the true and real agreement of the parties;

3) Whether the alleged consideration of ₱300,000.00 as appearing in the deed of absolute sale covering a prime lot in Mandaluyong of 126 square meters is adequate or not; and

4) Whether or not the signature of Socorro Banga in the deed of sale is genuine or not.

In its Order[11] of January 12, 1994, however, the trial court, noting that petitioner "has not come forward with evidence to indicate that [her signature on the deed of absolute sale] is a forgery . . . despite great lapse of time," considered her to have waived the presentation of evidence of falsification of her signature. It thus defined the remaining principal issue to be whether the deed of absolute sale expresses the true intention of the parties.

Upon the said "principal issue" then, the trial court, holding in the negative, found that the true intent of the parties was to merely guarantee the loan extended to Nelson.

The trial court arrived at its decision in light of the following observations:

A cursory glance at the duplicate original of the Deed of Absolute Sale (Exhibits 1, 1-A-Bello) will readily show that on page 1 thereof, the date "11th" (day of) "Dec. 1989"; and the Residence Certificates of defendant Nelson F. Banga, plaintiff and defendant Jose V. Bello for the year 1989, such as: "RCNo. 63315794, Mand, MM, 1/17/89";

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[10] *Id.* at 69-70.

[11] *Id.* at 236.

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"RC NO. B63315794, Mand, MM 1/17/89"; and "RC 09499689J, Mand, MM 3/6/89" on page 2 thereof, respectively, including the date "11th" (day of) December, 1989" had been typed on two different dates. Defendant Bello admitted this fact. Although defendant Bello contends that the Deed of Absolute Sale was executed by the parties and notarized by Notary Public Teodorico L. Baltazar on December 11, 1989, the Court believes that said Deed of Absolute sale was prepared in 1987 and was signed by defendant Banga on June 19, 1987 when he executed the Deed of Real Estate Mortgage for ₱200,000.00 on June 19, 1987 also acknowledged before the same Notary Public Teodorico L. Baltazar.

If the Deed of Absolute Sale were actually prepared and signed on December 11, 1989, as defendant Bello insists, there is no need to type the date "11th" (day of) "Dec. 1989" on page 1 and the date "11th" (day of) "December, 1989" and the 1989 residence certificates on page 2 on different dates. And, there is no point also in typing the residence certificates of defendant Banga, plaintiff and defendant Bello which were issued in 1987 including their tax account numbers or TAN. Besides, what firmly convinces the Court to believe that the Deed of Absolute Sale was prepared and executed on June 19, 1987 is the fact that in the acknowledgment portion of the document found on page 2, the number "7" in "Series of 1987," was superimposed with the number "9". And, the name of the Notary Public "TEODORICO L. BALTAZAR," the date of his notarial commission, "ptr" and "TAN" were all insertions which were typed only on December 11, 1989.[12]

On respondents' claim that the consideration for the sale of the property was ₱300,000.00, the trial court found it "preposterous" in light of the amount of ₱500,000.00 for which the property was mortgaged.

The trial court thus disposed:

WHEREFORE, the judgment is hereby rendered in favor of [petitioner] and against [Nelson and respondents]:

1. Declaring the Deed of Absolute Sale dated December 11, 1989 as NULL and VOID *ab initio*.

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[12] *Id.* at 281-282.

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2. Canceling Transfer of Certificate of Title No. 3294, Registry of Deeds of Mandaluyong, Metro Manila (now City of Mandaluyong).

3. Ordering [respondent] Jose V. Bello V *to pay* [petitioner] the amount of ₱50,000.00 as *exemplary damages*.

4. Ordering [respondent] Jose V. Bello V and Nelson F. Banga to pay, jointly and severally, [petitioner] the amount of ₱50,000.00 as and by way of attorney's fees.

5. Ordering [respondent] Jose V. Bello V and Nelson F. Banga to pay, jointly and severally, the costs of suit.

Counterclaims filed by [respondent] Jose V. Bello V and Nelson F. Banga against [petitioner] are DISMISSED. Crossclaim filed by Banga against [respondent] Bello is DISMISSED. (Italics supplied)

Respondents thereupon appealed to the Court of Appeals faulting the trial court in:

I

. . . DECLARING VOID *AB INITIO* THE DEED OF SALE DATED DECEMBER 11, 1989.

II

. . . NOT ORDERING [PETITIONER] AND HER HUSBAND, NELSON BANGA, TO PAY THEIR MORTGAGE INDEBTEDNESS TO [RESPONDENTS].

III

. . . HOLDING THAT [RESPONDENTS] ACTED WITH GROSS NEGLIGENCE AMOUNTING TO BAD FAITH.

IV

. . . ORDERING [RESPONDENTS] TO PAY EXEMPLARY DAMAGES TO [PETITIONER][13] (Italics supplied)

Nelson did not appeal the trial court's decision.

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[13] Court of Appeals *Rollo* at 15.

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By Decision[14] dated December 13, 2002, the appellate court granted the appeal of respondents, it holding that:

The document denominated as Deed of Absolute Sale dated December 11, 1989 executed between [respondent] Bello and Banga, with the marital consent of the latter's wife Socorro, indicates in certain terms, the object, the cause and the consideration of the contract of sale. The instrument was duly notarized and signed in the presence of two (2) witnesses. *As the language of the written contract of sale between the parties is clear and unambiguous*, it must be taken to mean that which, on its face, it purports to mean. And unless some good reason can be assigned to show that the words used should be understood in a different sense, the contract must stand.

Moreover, the deed of sale involved in the instant controversy is a notarized document. *Being a public instrument, it has in its favor the presumption of regularity*, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant. *Other than the bare allegations of [petitioner] that the deed of sale is fictitious, no convincing proof was adduced to overcome the presumption* of validity as to its authenticity and due execution. As complainant, plaintiff had the burden of proving that contrary to the recital in the deed of sale, she never appeared before the notary public and acknowledged the deed to be her voluntary act. It is worth mentioning that the deed of sale and the real estate mortgage previously executed between the parties was notarized by the same notary public, Atty. Teodorico Baltazar, further supporting the validity of the deed of sale.

Likewise, *the allegation of forgery of the signature of [petitioner] was not sufficiently proven* during trial. No expert witness was even presented to make an examination of petitioner's signatures in the deed of sale to ascertain whether or not the same are fictitious when compared with her specimen signatures. The prevailing rule in our jurisdiction is that whoever alleges forgery has the burden of proving the same, for forgery cannot be presumed but should be proved by clear and convincing evidence.

Our courts have consistently denied relief to a party who seeks to avoid the performance of an obligation voluntarily assumed because they turned out to be disastrous or unwise contracts, even if there

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[14] *Rollo* at 21-27.

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was a mistake of law or fact. *The claim of the [petitioner] that the consideration for the sale is grossly inadequate and therefore passes no title to [respondent] does not suffice to render the contract void*. While [petitioner] testified during the April 4, 1991 hearing that the prevailing market value of the property is ten to fifteen thousand per square meter, no evidence was presented, such as that of an independent real estate appraiser, to substantiate her claim. *Consonant with the rule that gross inadequacy of price would not nullify the sale, the deed of sale subject of the instant controversy must be upheld*.

To support [respondent] Bello's right to the property arising from the contract of sale between the parties, *TCT No. 3294 was issued by the Register of Deeds of Mandaluyong in his favor* on March 7, 1990. In addition, he had the property *declared in his name for taxation purposes, and paid the corresponding real property taxes thereon*. Absent any showing of irregularity in the issuance of the title, the public office who issued the same enjoys the presumption of having acted regularly in the performance of his functions.

As to the claim that the residence certificate number used by [respondents] in the deed of sale is fictitious as the same did not appear in the list retained by the Office of the City Treasurer of Mandaluyong, suffice it to state that the object of the law in the issuance of a residence certificate is to establish the true and correct identity of the person to whom it is issued. *A residence certificate, being a receipt issued upon receipt of money for public purposes, is a public instrument and as such presentation of the same document would suffice to prove its contents*.

We are thus inclined to agree with [respondents], after a thorough examination of the records of the case, that *a valid contract of sale was perfected* between [Nelson] Banga, with his wife's marital consent on the one hand, and Jose Bello on the other.

Moreover, *if the trial court was convinced that the real intent of the parties was one of mortgage, then the court should have ordered the payment of the balance of the indebtedness*. This, the court did not do so, bolstering the validity of the document as of sale and not of mortgage.

Thus, the award of exemplary damages, attorney's fees and the costs of suit in favor of [petitioner] is not justified under the circumstances.

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(Citations omitted; Italics supplied)

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The appellate court accordingly disposed:

WHEREFORE, in view of all the foregoing, the instant appeal is *GRANTED*. The June 1, 1995 Decision of the Regional Trial Court of Pasig City, Branch 71, is hereby *REVERSED* and *SET ASIDE*. Plaintiff-appellee Socorro Taopo-Banga and defendant [Nelson] Banga are hereby ordered to comply with their obligations under the contract of sale. Costs against the plaintiff. (Emphasis in the original)

Hence, this petition filed by petitioner-wife of Nelson, raising as sole issue whether the parties intended the deed of sale to be merely an equitable mortgage.

The pertinent Civil Code provisions on equitable mortgage read:

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 purchase 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 ensure 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 shall be subject to the usury laws.

x x x x x x x x x

(Italics supplied)

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Art. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an **absolute sale.** (Emphasis and italics supplied)

In *Aguirre v. Court of Appeals*, this Court ruled:

x x x The presence of even one of the circumstances in Article 1602 is sufficient basis to declare a contract as one of equitable mortgage. *The explicit provision of Article 1602 that any of those circumstances would suffice to construe a contract of sale to be one of equitable mortgage is in consonance with the rule that law favors the least transmission of property rights. To stress,* **the existence of any one of the conditions under Article 1602,** *not a concurrence, nor an overwhelming number of such circumstances,* **suffices to give rise to the presumption that the contract is an equitable mortgage**.[15] (Emphasis and italics supplied)

The appeal is impressed with merit.

The observation of the trial court that the deed of absolute sale was prepared in 1987, the same year that the original deed of real estate mortgage was executed, is well taken. Why, indeed, were the residence certificate numbers issued to the parties in *1987* appearing in the acknowledgment portion of the real estate mortgage of *1987* are the same as those appearing in the acknowledgment portion of the deed of absolute sale purportedly executed in *1989*, respondents offered no explanation. In fact, in the acknowledgment portion of the 1989 deed of absolute sale whereon the phrase "Series of 1987" appears, the number "9" was superimposed on the number "7", which this Court takes as a clear design to make it appear that it was notarized in 1989.

And why, indeed, was the "purchase price" only ₱300,000.00 when the loan granted to Nelson was ₱500,000.00 if the assailed document was really one of sale?

Badges thus indeed exist showing that the deed of sale was accomplished in 1987 as a part of the consideration in the grant of the loan.

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[15] 323 SCRA 771, 775 (2000).

But more revealing of the true intention of the parties is the undisputed relationship of Nelson and respondents as debtor and creditors, respectively, which, together with the circumstances mentioned above, draws this Court to affirm the trial court's ruling that the deed of absolute sale was executed to serve as additional security for the loan extended to Nelson. As *Reyes v. Court of Appeals* instructs:[16]

> In determining whether a deed absolute in form is a mortgage, the court is not limited to the written memorials of the transaction. *The decisive factor in evaluating such agreement is* **the intention of the parties,** *as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the* **relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding.** x x x (Emphasis and italics supplied)

Debtors usually find themselves in an unequal position when bargaining with their creditors, and will readily sign onerous contracts just to have the money they need. Necessitous men are not always free, in that to answer a pressing emergency, they will submit to any terms that the crafty may impose on them. This is precisely the evil that the above-quoted provision on equitable mortgage seeks to prevent.[17]

Lastly, if the parties really forged a contract of sale, why did not respondents immediately demand the vacation by Nelson of the property? They only served Nelson a notice to vacate four months *after* the complaint subject of the present petition was filed, by letter[18] dated August 17, 1990, which appears to be an afterthought.[19]

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[16] 339 SCRA 97, 103 (2000).

[17] *Cruz v. Court of Appeals*, 412 SCRA 614, 621 (2003).

[18] Exhibit "7", Records at 247.

[19] *Cruz v. Court of Appeals*, *supra* at 623.

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A word on the award to petitioner by the trial court of exemplary damages against Jose in the amount of ₱50,000.00 which respondents assailed, among other things, before the appellate court as unfounded "bad faith or gross negligence on the part of [Jose] . . . not [having] been established."

The pertinent provisions of the Civil Code read:

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, **in addition to the moral, temperate, liquidated or compensatory damages.**
>
> x x x x x x x x x
>
> Art. 2234. While the amount of exemplary damages need not be proved, *the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded*. x x x (Emphasis and italics supplied)

While petitioner did pray for the award of moral damages in her complaint and even testified on her entitlement to it, the trial court made no such award in its decision and petitioner did not assail the same by way of a motion for reconsideration of the decision or by appeal before the appellate court. There is thus no basis for the award of exemplary damages.

Finally, the logical consequence of a finding that a deed of sale is actually one of equitable mortgage is to decree the "vendor"-debtor to pay his outstanding loan to the "vendee"-creditor.

As priorly mentioned, Nelson alleged in his Answer that he had paid his mortgage obligation to respondents. The trial court, however, despite ruling that the deed of sale was actually an equitable mortgage, did not pass upon his claim. The trial court's judgment is thus *incomplete*,[20] as in fact in respondents' appeal to the appellate court, they assigned as one of the errors of the trial court its failure to order petitioner and her husband Nelson to pay the loan.

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[20] *Vide Ignacio et al. v. Hilario et al.,* 76 Phil. 605, 608-609 (1946).

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A remand of the case to the trial court is thus in order, only for the purpose of determining whether the mortgage obligation had indeed been settled, and if not, how much should Nelson pay respondents to settle the same.

WHEREFORE, the petition is *GRANTED*. The December 13, 2002 decision of the Court of Appeals is *REVERSED* and *SET ASIDE* and the June 1, 1995 decision of the Regional Trial Court of Pasig City, Branch 71 in Civil Case No. 59384 is *REINSTATED* with the *MODIFICATION* that the award of exemplary damages is *DELETED*.

The case is nevertheless *REMANDED* to the trial court for further proceedings only for the purpose of determining whether Nelson has settled his mortgage obligation to respondent and, if in the negative, to determine the amount thereof and issue the necessary order or orders.

SO ORDERED.

Panganiban (Chairman), Sandoval-Gutierrez, Corona, and *Garcia, JJ.,* concur.

THIRD DIVISION

[G.R. No. 158157. September 30, 2005]

PEOPLE OF THE PHILIPPINES and VILMA CAMPOS, *petitioners, vs.* **LOUEL UY, TEOFILO PANANGIN, HON. JUDGE MAMINDIARA P. MANGOTARA, Acting Judge, Br. 44, Initao, Misamis Oriental,** *respondents.*