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FIRST DIVISION

[G.R. No. L-28658. October 18, 1979]

VICENTE C. REYES, *applicant-appellee, vs.* **FRANCISCO SIERRA, EMILIO SIERRA, ALEJANDRA SIERRA, FELIMON SIERRA, AURELIO SIERRA, CONSTANCIO SIERRA, CIRILO SIERRA and ANTONIA SANTOS,** *oppositors-appellants.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; WHEN ESTABLISHED.**— The Court is of the opinion that Exhibit "D" is a mortgage contract. The intention of the parties at the time of the execution of the contract must prevail, that is, the borrowing and lending of money with security. The use of the word Debt (*utang*) in an agreement helps to point out that the transaction was intended to be a loan with mortgage, because the term "*utang*" implies the existence of a creditor-debtor relationship. The Court has invariably upheld the validity of an agreement or understanding whereby the lender of money has taken a deed to the land as security for repayment of the loan.

2. **ID.; ID.; ID.; OWNERSHIP OF THE THING MORTGAGED IS RETAINED BY THE MORTGAGOR.**— Obviously, from the nature of the transaction, applicant's predecessor-in-interest is a mere mortgagee, and ownership of the thing mortgaged is retained by Basilia Beltran, the mortgagor.

3. **ID.; ID.; ID.; ID.; FAILURE OF MORTGAGOR TO REDEEM THE PROPERTY DOES NOT AUTOMATICALLY VEST OWNERSHIP OF THE PROPERTY TO THE MORTGAGEE.**— The mortgagee, however, may recover the loan, although the mortgage document evidencing the loan was non-registrable being a purely private instrument. Failure of mortgagor to redeem the property does not automatically vest ownership of the property to the mortgagee, which would grant the latter the right to appropriate the thing mortgaged or dispose of it. This violates the provision of Article 2088 of the New Civil Code, which reads: "The creditor cannot appropriate the things given

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by way of pledge or mortgage, or dispose by them. Any stipulation to the contrary is null and void."

4. **ID.; ID.; ID.; ID.; THE DOCTRINE "ONCE A MORTGAGE ALWAYS A MORTGAGE" HAS BEEN FIRMLY ESTABLISHED, WHATEVER BE ITS FORM.**— The belief of applicant that he owns the property in question which he inherited from his father cannot overthrow the fact that the transaction is a mortgage. The doctrine "once a mortgage always a mortgage" has been firmly established whatever be its form. (*Macapinlac vs. Gutierrez Rapide, supra*) The parties cannot by any stipulation, however express and positive, render it anything but a mortgage. No right passes to applicant except that of a mortgage since one cannot acquire a right from another who was not in possession thereof. A derivative right cannot rise higher than its source.

5. **ID.; ID.; *PACTUM COMMISSORIUM*; WHEN CONSTITUTED.**— The act of applicant in registering the property in his own name upon mortgagor's failure to redeem the property would amount to a *pactum commissorium* which is against good morals and public policy.

6. **ID.; LAND REGISTRATION; THE PAYMENT OF TAXES ON PROPERTY DOES NOT ALONE CONSTITUTE SUFFICIENT EVIDENCE OF TITLE.**— The trial court's finding that since applicant and his father had been continuously paying the realty taxes, that fact "constitutes strong corroborating evidence of applicant's adverse possession," does not carry much weight. Mere failure of the owner to pay the taxes does not warrant a conclusion that there was abandonment of a right to the property. The payment of taxes on property does not alone constitute sufficient evidence of title. (*Elumbaring vs. Elumbaring*, 12 Phil. 389)

7. **ID.; ID.; APPLICATION; APPLICANT HAVING FAILED TO SHOW BY SUFFICIENT EVIDENCE A REGISTRABLE TITLE TO THE LAND IN QUESTION, THE APPLICATION FOR REGISTRATION SHOULD BE DISMISSED.**— An applicant for registration of title must prove his title and should not rely on the absence or weakness of the evidence of the oppositors. For purposes of prescription, there is just title when adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership (Art. 1129, New Civil Code). Just title must be proved and is

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never presumed (Art. 1131, New Civil Code). Mortgage does not constitute just title on the part of the mortgagee since ownership is retained by the mortgagor. When possession is asserted to convert itself into ownership, a new right is sought to be created, and the law becomes more exacting and requires positive proof of title. Applicant failed to present sufficient evidence to prove that he is entitled to register the property.

DECISION

DE CASTRO, *J.*:

Appeal from the decision dated December 29, 1966 of the Court of First Instance of Rizal Branch I, Pasig, which declared applicant Vicente Reyes the true and rightful owner of the land covered by Plan Psu-189753 and ordered the registration of his title thereto.

On January 3, 1961, Vicente Reyes filed an application for registration of his title to a parcel of land situated in Antipolo, Rizal and covered by Plan Psu-189753 of the Bureau of Lands. In his application, he declared that he acquired the land by inheritance from his father who died sometime in 1944. Applicant is one of the heirs of the deceased Vicente Reyes, Sr. but the other heirs executed a deed of quit claim in favor of the applicant.

The notice of initial hearing was published in the Official Gazette, and a copy thereof was posted in a conspicuous place in the land in question and in the municipal building of Antipolo, Rizal. An opposition was filed by the Director of Lands, Francisco Sierra and Emilio Sierra. An Order of General Default was issued on June 28, 1962. A motion to set aside an interlocutory default order was filed by Alejandra, Felimon, Aurelio, Apolonio, Constancio, Cirilo, all surnamed Sierra and Antonia Santos, thru counsel, and the trial court issued an Order on February 4, 1966 amending the general order of default so as to include the aforementioned movants as oppositors.

The case was set for hearing, and after trial the court rendered a decision, the dispositive portion of which reads as follows:

"IN VIEW OF THE ABOVE CONSIDERATIONS, this Court declares Vicente Reyes the true and rightful owner of the land covered by

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Plan, Psu-189753 and orders the registration of his title thereto, provided that the title to be issued shall be subject to a public easement of right-of-way over a 2.00 meter-wide strip of the land along Lucay Street for the latter's widening and improvement.

"As soon as this decision is final let the corresponding decree be issued in favor of VICENTE C. REYES, widower, Filipino, of legal age and resident of 1851 P. Guevarra Street, Santa Cruz, Manila." (p. 25, Record on Appeal).

Oppositors appealed from the aforesaid decision, with the following assignment of errors:

I

"THE LOWER COURT ERRED IN BELIEVING AND HOLDING THAT ARTICLES 1134 AND 1137 OF THE NEW CIVIL CODE ARE APPLICABLE TO THIS INSTANT CASE ALTHOUGH THERE WAS NO FORECLOSURE OR SALE OF THE PROPERTY TO THE HIGHEST BIDDER.

II

"THE LOWER COURT ERRED IN BELIEVING AND HOLDING THAT APPLICANT-APPELLEE AND HIS PREDECESSOR-IN-INTEREST HAD BEEN IN CONSTRUCTIVE POSSESSION OF THE LAND FROM APRIL 19, 1926 UP TO THE PRESENT AS SHOWN BY THE FACT THAT THEY HAD PAID THE REALTY TAXES.

III

"THE LOWER COURT ERRED IN BELIEVING AND HOLDING THAT BECAUSE OPPOSITORS-APPELLANTS AND THEIR PREDECESSORS-IN-INTEREST HAD NOT TAKEN ANY ACTIVE INTEREST TO PAY REALTY TAXES SINCE 1926 AND IT WAS APPLICANT-APPELLEE AND HIS PREDECESSOR-IN-INTEREST THAT PAID THE REALTY TAXES FROM THE SAME PERIOD, THIS CONSTITUTES STRONG CORROBORATING EVIDENCE OF APPLICANT'S ADVERSE POSSESSION.

IV

"THE LOWER COURT ERRED IN BELIEVING AND HOLDING THAT DOCUMENT EXH. 'D' EXECUTED BY BASILIA BELTRAN IN 1926 WAS ALREADY A CONVEYANCE OF THE LAND IN QUESTION TO VICENTE REYES AND THE FAILURE OF BASILIA BELTRAN AND HER CHILDREN TO REDEEM THE SAME, COULD

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BE CONSIDERED AS IF THE LAND HAD ALREADY BEEN SOLD TO HIM." (p. 21, *Rollo.*)

The land applied for was originally owned by Basilia Beltran's parents, and upon their death in 1894, Basilia inherited the property. On April 19, 1926, Basilia Beltran, a widow, borrowed from applicant's father, Vicente Reyes, Sr. the amount of P100.00 and secured the loan with the piece of land in question, as evidenced by Exhibit "D" quoted hereunder:

"*SA KAALAMAN NANG LAHAT NA BUMASA AT NAKAKITA NITONG KASULATAN*:

Kaming mag-kakapatid may sapat na gulang na nakalagda sa kasulatan ito, bilang katibayan nang pag-papahintulot sa aming Ina na si Bacilia Beltran, na ipanagutan kay G. Vicente Reyes sa inutang ha halagang isang daan piso (₱100.00) na walang anopamang pakinabang; ang isang lagay na lupa sa kallehon Sukay, Antipolo, Rizal, naliligiran nang mga lupang may titulo Torrents, expedientes Nos. 770, 1831, lote 1, 645 at 1839 lote 2, may kabu-uan humigit kumulang sa apat na raan metro; ito'y aring naiwan ng ama naming namatay na si Melecio Sierra.

Ang katotohanan kahit isangla o ipag-bile man ng tuluyan ang nasabing pag-aari o lupa wala kaming kinalaman, sapagkat ipinauubaya naming lubusan sa aming Ina ang kapamahalaan.

Sa katunayan nagsilagda kaming mga anak, at apo kay Esteban, sa harap nang saksing magpapatotoo.

Ngayon ika 19 nang Abril nang 1926. Antipolo, Rizal. K.P.

Lagda ni

Bacilia Beltran
Gregorio Sierra

Saksi:

_____

_____"

Since the execution of this document, Vicente Reyes, Sr. began paying the realty taxes up to the time of his death in 1944, after which, his children continued paying the taxes. Basilia Beltran died in 1938 before Reyes could recover from the loan.

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Applicant, in seeking the registration of the land, relied on his belief that the property belongs to his father who bought the same from Basilia Beltran, as borne out by his testimony during the trial on direct examination.

"Q. Mr. Reyes, do you claim to be the owner of this property included or described in your application?

"A. Yes, sir.

"Q. How did you acquire this property?

"A. Since 1926 we were the ones paying the land taxes.

"Q. From whom did you acquire this property?

"A. Basilia Beltran.

"Q. Do you mean to say that you yourself bought this property?

"A. My father was the one who bought the property.

"Q. What is the name of your father?

"A. Vicente C. Reyes.

"Q. Where is he now?

"A. He is already dead.

"Q. Can you inform this Honorable Court, if you know, how your father acquired this property?

"A. Since 1926 my father bought that land.

"Q. Was that transaction evidenced by a document?

"A. Yes, there is a document.

"Q. From whom did your father allegedly purchase the property?

"A. Basilia Beltran."

From the above-quoted testimony of applicant, it is evident that he considered the document marked Exhibit "D" as contract of *Sale* and *not as a mortgage*. Oppositors contended that the words "*isinangla*," "*na ipananagutan sa inutang na halagang isang daang piso*," "*Kahit isangla o ipagbili*," *etc.*, manifest that the document should be treated as a mortgage, antichresis,

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or *pactum commissorium* and not as an absolute sale or *pacto de retro* sale. (p. 28, Brief, Oppositors-Appellants).

The Court is of the opinion that Exhibit "D" is a mortgage contract. The intention of the parties at the time of the execution of the contract must prevail, that is, the borrowing and lending of money with security. The use of the word debt (*utang*) in an agreement helps to point out that the transaction was intended to be a loan with mortgage, because the term "*utang*" implies the existence of a creditor-debtor relationship. The Court has invariably upheld the validity of an agreement or understanding whereby the lender of money has taken a deed to the land as security for repayment of the loan. Thus:

"The fact that the real transaction between the parties was a borrowing and lending, will, whenever, or however it may appear, show that a deed, absolute on its face was intended as a security for money; and whenever it can be ascertained to be a security for money, it is only a mortgage, however artfully it may be disguised." (*Villa vs. Santiago*, 38 Phil. 163).

"The whole case really turns on the question of whether the written instrument in controversy was a mortgage or a conditional sale. x x x The real intention of the parties at the time the written instrument was made must govern in the interpretation given to it by the courts. x x x The correct test, where it can be applied, is the continued existence of a debt or liability between the parties. If such exists, the conveyance may be held to be merely a security for the debt or an indemnity against the liability." (*Cuyugan vs. Santos*, 34 Phil. 112).

The *Cuyugan Case* quoted some provisions in Jones' Commentaries on Evidence, Vol. 3, paragraphs 446-447 which are likewise applicable to the facts of the case at bar:

"446. *To show that instruments apparently absolute are only securities.* x x x It is an established doctrine that a court of equity will treat a deed, absolute in form, as a mortgage, when it is executed as security for loan of money. The court looks beyond the terms of the instrument to the real transaction; and when that is shown to be one of security and not of sale, it will give effect to the actual contract of the parties."

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"447. *Same — Real intention of the parties to be ascertained.* x x x As we have shown in the preceding section, the *intention* of the parties *must govern*; and it matters not what peculiar form the transaction may have taken. The inquiry always is, Was a security for the loan of money or other property intended? x x x A debt owing to the mortgagee, or a liability incurred for the grantor, either pre-existing or created at the time the deed is made, is essential to give the deed the character of a mortgage. The relation of debtor and creditor must appear. The existence of the debt is one of the tests. x x x In construing the deed to be a mortgage, its character as such must have existed from its very inception, — created at the time the conveyance was made."

The same principle was laid down in a later case, that of *Macapinlac vs. Gutierrez Rapide*, 43 Phil. 781, quoting 3 Pomeroy's Equity Jurisdiction, Section 1195, wherein it was stated:

"* * * The doctrine has been firmly established from an early day that when the character of a mortgage has attached at the commencement of the transaction, so that the instrument, whatever be its form, is regarded in equity as a mortgage, that character of mortgage must and will always continue. If the instrument is in its essence a mortgage, the parties cannot by any stipulations, however express and positive, render it anything but a mortgage or deprive it of the essential attributes belonging to a mortgage in equity."

Concerning the legal effects of such contract, Pomeroy observes:

"* * * Whenever a deed absolute on its face is thus treated as a mortgage, the parties are clothed with all the rights, are subject to all liabilities, and are entitled to all the remedies of ordinary mortgagors and mortgagees. The grantee may maintain an action for the foreclosure of the grantor's equity of redemption; the grantor may maintain an action to redeem and to compel a reconveyance upon his payment of the debt secured. If the grantee goes into possession, and as such is liable to account for the rents and profits."

Obviously, from the nature of the transaction, applicant's predecessor-in-interest is a mere mortgagee, and ownership of the thing mortgaged is retained by Basilia Beltran, the

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mortgagor. The mortgagee, however, may recover the loan, although the mortgage document evidencing the loan was non-registrable being a purely private instrument. Failure of mortgagor to redeem the property does not automatically vest ownership of the property to the mortgagee, which would grant the latter the right to appropriate the thing mortgaged or dispose of it. This violates the provision of Article 2088 of the New Civil Code, which reads:

"The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose by them. Any stipulation to the contrary is null and void."

The act of applicant in registering the property in his own name upon mortgagor's failure to redeem the property would amount to a *pactum commissorium* which is against good morals and public policy.

In declaring applicant as the "true and rightful owner of the land in question," the trial court held that applicant and his predecessor-in-interest acquired ownership over the property by means of prescription having been in constructive possession of the land applied for since 1926, applying Arts. 1134 and 1137 of the New Civil Code:

"Art. 1134. — Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

"Art. 1137. — Ownership and other real rights over immovable also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or good faith."

Applicant in his testimony on cross-examination, admitted that he and his father did not take possession of the property but only made use of the same for the purpose of spending vacation there, which practice they discontinued for the last 23 years. Possession of the property must be in the concept of an owner. This is a fundamental principle of the law of prescription in this jurisdiction. In the case at bar, the possession of applicant was not adverse, nor continuous.

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An applicant for registration of title must prove his title and should not rely on the absence or weakness of the evidence of the oppositors. For purposes of prescription, there is just title when adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership (Art. 1129, New Civil Code). Just title must be proved and is never presumed (Art. 1131, New Civil Code). Mortgage does not constitute just title on the part of the mortgagee since ownership is retained by the mortgagor. When possession is asserted to convert itself into ownership, a new right is sought to be created, and the law becomes more exacting and requires positive proof of title. Applicant failed to present sufficient evidence to prove that he is entitled to register the property. The trial court's finding that since applicant and his father had been continuously paying the realty taxes, that fact "constitutes strong corroborating evidence of applicant's adverse possession," does not carry much weight. Mere failure of the owner to pay the taxes does not warrant a conclusion that there was abandonment of a right to the property. The payment of taxes on property does not alone constitute sufficient evidence of title. (*Elumbaring vs. Elumbaring*, 12 Phil. 389)

The belief of applicant that he owns the property in question which he inherited from his father cannot overthrow the fact that the transaction is a mortgage. The doctrine "once a mortgage always a mortgage" has been firmly established, whatever be its form. (*Macapinlac vs. Gutierrez Rapide*, *supra*) The parties cannot by any stipulation, however express and positive, render it anything but a mortgage. No right passes to applicant except that of a mortgage since one cannot acquire a right from another who was not in possession thereof. A derivative right cannot rise higher than its source.

Applicant having failed to show by sufficient evidence a registrable title to the land in question, the application for registration should be dismissed.

WHEREFORE, the decision appealed from is hereby set aside, and let another one be entered ordering the registration of the title of the land in question in the name of the oppositors-

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appellants. The said oppositors-appellants are hereby directed to pay the applicant-appellee within ninety (90) days from the finality of this decision, the debt in the amount of ₱100.00 plus interest at the rate of six per cent (6%) per annum from April 19, 1926 until paid. No pronouncement as to costs.

SO ORDERED.

Teehankee, Acting C.J. (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-33172. October 18, 1979]

ERNESTO CEASE, CECILIA CEASE, MARION CEASE, TERESA CEASE-LACEBAL, and the F.L. CEASE PLANTATION CO., INC. as Trustee of properties of the defunct TIAONG MILLING & PLANTATION CO., *petitioners, vs.* **HONORABLE COURT OF APPEALS, (Special Seventh Division), HON. MANOLO L. MADDELA, Presiding Judge, Court of First Instance of Quezon, BENJAMIN CEASE and FLORENCE CEASE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; WHERE PARTITION IS POSSIBLE, EITHER JUDICIAL OR EXTRAJUDICIAL, THE ESTATE SHOULD NOT BE BURDENED WITH AN ADMINISTRATION PROCEEDING WITHOUT GOOD AND COMPELLING REASON.— Judicial rulings consistently hold the view that where partition is possible, either judicial or extrajudicial, the estate should not be burdened with an administration proceeding