



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**SPS. FELIPE SOLITARIOS and
JULIA TORDA,**

Petitioners,

G.R. No. 199852

Present:

- versus -

**SPS. GASTON JAQUE and LILIA
JAQUE,**

Respondents.

VELASCO, JR., *J.*, Chairperson,
VILLARAMA, JR.,
REYES,
PERLAS-BERNABE,*
JARDELEZA, *JJ.*

Promulgated:

November 12, 2014

[Signature]

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DECISION

VELASCO, JR., *J.*:

Nature of the Case

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court, petitioners spouses Felipe Solitarios and Julia Torda (spouses Solitarios) seek the reversal of the August 31, 2010 Decision and November 24, 2011 Resolution of the Court of Appeals (CA) in CA-G.R. CEB-CV No. 00112, which in turn set aside the Decision of the Regional Trial Court of Calbayog City, Branch 31 (RTC), in Civil Case No. 772.

The Facts

The property subject of this suit is a parcel of agricultural land designated as Lot 4089, consisting of 40,608 square meters (sq. m.), and located in Calbayog, Samar. It was originally registered in the name of petitioner Felipe Solitarios under Original Certificate of Title (OCT) No. 1249, and, thereafter, in the name of the respondents, spouses Gaston and Lilia Jaque (the Jaques), under Transfer Certificate of Title (TCT) No. 745.

In a Complaint for Ownership and Recovery of Possession with the RTC of Calbayog City, the respondents spouses Jaque alleged that they

* Acting Member per Special Order No. 1866 dated November 4, 2014.

purchased Lot 4089 from the petitioners, spouses Solitarios in stages. According to respondents, they initially bought one-half of Lot No. 4089 for ₱7,000.00. This sale is allegedly evidenced by a notarized Deed of Sale dated May 8, 1981. Two months later, the spouses Solitarios supposedly mortgaged the remaining half of Lot 4089 to the Jaques via a Real Estate Mortgage (REM) dated July 15, 1981, to secure a loan amounting to ₱3,000.00.

After almost two (2) years, the spouses Solitarios finally agreed to sell the mortgaged half. However, instead of executing a separate deed of sale for the second half, they executed a Deed of Sale dated April 26, 1983 for the whole lot to save on taxes, by making it appear that the consideration for the sale of the entire lot was only ₱12,000.00 when the Jaques actually paid ₱19,000.00 in cash and condoned the spouses Solitarios' ₱3,000.00 loan.

On the basis of this second notarized deed, the Jaques had OCT No. 1249 cancelled and registered Lot 4089 in their name under Transfer Certificate of Title (TCT) No. 745.

In spite of the sale, the Jaques, supposedly out of pity for the spouses Solitarios, allowed the latter to retain possession of Lot 4089, subject only to the condition that the spouses Solitarios will regularly deliver a portion of the property's produce. In an alleged breach of their agreement, however, the spouses Solitarios stopped delivering any produce sometime in 2000. Worse, the spouses Solitarios even claimed ownership over Lot 4089. Thus, the Jaques filed the adverted complaint with the RTC.

For their part, the spouses Solitarios denied selling Lot 4089 and explained that they merely mortgaged the same to the Jaques after the latter helped them redeem the land from the Philippine National Bank (PNB).

The spouses Solitarios narrated that, way back in 1975, they obtained a loan from PNB secured by a mortgage over Lot 4089. They were able to pay this loan and redeem their property with their own funds. Shortly thereafter, in 1976, they again mortgaged their property to PNB to secure a ₱5,000.00 loan. This time, the Jaques volunteered to pay the mortgage indebtedness, including interests and charges and so gave the spouses Solitarios ₱7,000.00 for this purpose.

However, this accommodation was made, so the spouses Solitarios add, with the understanding that they would pay back the Jaques by delivering to them a portion of the produce of Lot 4089, in particular, one-half of the produce of the rice land and one-fourth of the produce of the coconut land. The spouses Solitarios contended that this agreement was observed by the parties until May 2000, when Gaston Jaque informed them that he was taking possession of Lot 4089 as owner. And to their surprise,

Gaston Jaque showed them the Deeds of Sale dated May 8, 1981 and April 26, 1983, the REM contract dated July 15, 1981, and TCT No. 745 to prove his claim. The spouses Solitarios contended that these deeds of sale were fictitious and their signatures therein forged. Further, the spouses Solitarios challenge the validity of TCT No. 745, alleging that the Jaques acquired it through fraud and machinations and by taking advantage of their ignorance and educational deficiency. Thus, they prayed that the RTC: (1) cancel TCT No. 745; (2) declare the adverted deeds of sales dated May 8, 1981 and April 26, 1983 as null and void; (3) declare them the true and lawful owners of Lot 4089; and (4) award them moral and actual damages.

During the course of the trial, and in compliance with the February 7, 2001 Order of the RTC, the spouses Solitarios deposited with the court *a quo* the Jaques' purported share in the produce of Lot 4089 for the years 2001-2003, which amounted to ₱16,635.60.¹

On April 15, 2004, the RTC rendered a Decision² upholding the validity of the deeds of sale in question and TCT No. 745, rejecting the allegations of forgery and fraud. However, in the same breath, the RTC declared that what the parties entered into was actually an equitable mortgage as defined under Article 1602 in relation to Article 1604 of the New Civil Code, and not a sale. Consequently, the RTC ordered, among others, the reformation of the Deeds of Sale dated May 9, 1981 and April 26, 1983, and the cancellation of TCT No. 745 in the name of the Jaques. The dispositive portion of the RTC Decision reads:

WHEREFORE, this Court dismisses the instant case and pronounces Judgment against plaintiffs and hereby orders the following:

1. Reformation of the Deed of Sale dated May 9, 1981 (Exhibit "E") and the Deed of Sale dated April 26, 1983 (Exhibit "G") into contracts of mortgage;
2. Cancellation of TCT No. 745 in the name of spouses Gaston Jaque and Lilia Laure Jaque;
3. Considering the total mortgage debt of Php 12,000.00 as totally paid pursuant to Article 1602 of the New Civil Code;
4. Release of the amounts deposited to the Court by defendants to them minus lawful charges for their safekeeping, if any; and
5. Payment of costs of the proceedings by the plaintiffs.

SO ORDERED.³

The RTC anchored its holding on the nature of the pertinent contracts in question on its findings that: (1) after the alleged sale, the spouses Solitarios remained in possession of the land; (2) the Jaques did not physically occupy Lot 4089; (3) the consideration for the sale of the whole land as stated in the Deed of Sale dated April 26, 1983, was only

¹ Records, p. 129.

² *Rollo*, pp. 67-80.

³ *Id.* at 80.

□12,000.00, an amount grossly inadequate for a titled coconut and rice lands consisting of 40,608 sq. m.; (3) the Jaques did not disturb the possession of Lot 4089 by Leonora Solitarios, Felipe's sister-in-law, who resided therein; and (4) the Jaques never had a tenant in the subject property.

On appeal, the CA⁴ reversed and set aside the RTC Decision, rejecting the trial court's holding that the contract between the parties constituted an equitable mortgage.

The CA noted that the allegation that the transaction is an equitable mortgage and not one of sale was not presented before the trial court and was raised belatedly on appeal. Even then, the CA held that the spouses Solitarios failed to convincingly prove that the deeds of sale were sham, noting that their bare denial as to their authenticity was insufficient to overcome the positive value of the notarized deeds of sale. The CA further found that the spouses Solitarios' claim of inadequacy of the purchase price is unsupported by any evidence on record and that the spouses Solitarios' possession of Lot 4089 after the sale was not in the concept of an owner. In addition, the appellate court gave weight to the fact that the Jaques paid the taxes on Lot 4089 since 1984. The CA, thus, concluded that based on the parties' actuations before, during, and after the transactions, it was unmistakable that they had no other intention but to enter into a contract of sale of Lot 4089.

Their Motion for Reconsideration having thereafter been denied by the CA in its Resolution dated November 24, 2011, the spouses Solitarios⁵ have filed the instant petition.

Issue

From the foregoing narration of facts, it is abundantly clear that the only material point of inquiry is whether the parties effectively entered into a contract of absolute sale or an equitable mortgage of Lot 4089.

The Court's Ruling

The petition is impressed with merit.

At the outset, We note that, contrary to the finding of the CA, petitioner spouses Solitarios actually presented before the RTC their position that the real agreement between the parties was a mortgage, and not a sale. Being unlettered, petitioners may have averred that the deeds of sale

⁴ In a Decision of the CA 20th Division Cebu City in CA-G.R. CEB-CV No. 00112 promulgated on August 31, 2010, penned by Associate Justice Agnes Reyes Carpio and concurred in by Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr.

⁵ Felipe Solitarios passed away on May 13, 2010 and was substituted by his legal heirs in this case. *Rollo*, pp. 7-10 and p. 14.

and TCT presented by respondents were forgeries, obtained as they were through fraud and machination. However, their saying that the sale instruments were “fictitious” and their signatures thereon were “forged” amounts to alleging that they never agreed to the sale of their lot, and they never intended to sign such conveyances. This reality is supported by the testimony of petitioner Felipe Solitarios that was offered to prove the true intention of the parties — that Lot 4089 was only mortgaged, not sold, to the Jaques. Before Felipe’s direct examination, his counsel stated thus-

“ATTY. MARTIRES

With the permission of the Court. This witness is one of the defendants; he will testify that the land was just mortgaged to the plaintiff contrary to the claim of the plaintiff that the defendants sold the same to the plaintiffs; he will also testify that the defendants never executed deed of sale in favor of the plaintiffs; he will also testify that ½ of the produce of the cocoland subject of this case was delivered by the defendants to the plaintiffs and with regards to the riceland, ¼ of the produce was also delivered to the plaintiffs; and he will also testify other matters related to this case.”⁶

The Court is, therefore, not precluded from looking into the real intentions of the parties in order to resolve the present controversy. For that reason, the Court takes guidance from Article 1370 of the Civil Code, which instructs that “if the words [of a contract] appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.” Indeed, it is firmly settled that clarity of contract terms and the name given to it does not bar courts from determining the true intent of the parties. In *Zamora vs. Court of Appeals*,⁷ the Court elucidated that —

*In determining the nature of a contract, courts are not bound by the title or name given by the parties. 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 their conduct, words, actions and deeds prior to, during and immediately after executing the agreement. As such therefore, documentary and parol evidence may be submitted and admitted to prove such intention.*⁸

Further, in resolving this kind of controversy, the doctrinal teaching of *Reyes vs. Court of Appeals*⁹ impels us to give utmost consideration to the intention of the parties in light of the relative situation of each, and the circumstances surrounding the execution of the contract, thus:

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

⁶ TSN of testimony of Felipe Solitarios, pp. 2-3.

⁷ G.R. No. 102557, July 30, 1996.

⁸ Emphasis supplied.

⁹ *Reyes v. Court of Appeals*, 393 Phil. 479, 489 (2000).

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

There is no single conclusive test to determine whether a deed of sale, absolute on its face, is really a simple loan accommodation secured by a mortgage.¹⁰ However, Article 1602 in relation to Article 1604 of the Civil Code enumerates several instances when a contract, purporting to be, and in fact styled as, an absolute sale, is presumed to be an equitable mortgage, thus:

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.¹¹

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

As evident from Article 1602 itself, the presence of *any* of the circumstances set forth therein suffices for a contract to be deemed an equitable mortgage. No concurrence or an overwhelming number is needed.¹²

With the foregoing in mind, We thus declare that the transaction between the parties of the present case is actually one of equitable mortgage pursuant to the foregoing provisions of the Civil Code. It has never denied

¹⁰ *Sps. Alvaro v. Sps. Ternida*, G.R. No. 166183, January 20, 2006.

¹¹ Emphasis supplied.

¹² *Id.*

by respondents that the petitioners, the spouses Solitarios, have remained in possession of the subject property and exercised acts of ownership over the said lot even after the purported absolute sale of Lot 4089. This fact is immediately apparent from the testimonies of the parties and the evidence extant on record, showing that the real intention of the parties was for the transaction to secure the payment of a debt. Nothing more.

***Petitioner's Possession of the
Subject Property after the
Purported Sale***

During pre-trial, the Jaques admitted that the spouses Solitarios were in possession of the subject property.¹³ Gaston Jaque likewise confirmed that petitioners were allowed to produce copra and till the rice field, which comprise one-half of the lot that was previously covered by the real estate mortgage, after said portion was allegedly sold to them.¹⁴

This Court had held that a purported contract of sale where the vendor remains in physical possession of the land, as lessee or otherwise, is an *indicium* of an equitable mortgage.¹⁵ In *Rockville v. Sps. Culla*,¹⁶ We explained that the reason for this rule lies in the legal reality that in a contract of sale, the legal title to the property is immediately transferred to the vendee. Thus, retention by the vendor of the possession of the property is inconsistent with the vendee's acquisition of ownership under a true sale. It discloses, in the alleged vendee, a lack of interest in the property that belies the truthfulness of the sale.

During the period material to the present controversy, the petitioners, spouses Solitarios, retained actual possession of the property. This was never disputed. If the transaction had really been one of sale, as the Jaques claim, they should have asserted their rights for the immediate delivery and possession of the lot instead of allowing the spouses Solitarios to freely stay in the premises for almost seventeen (17) years from the time of the purported sale until their filing of the complaint. Human conduct and experience reveal that an actual owner of a productive land will not allow the passage of a long period of time, as in this case, without asserting his rights of ownership.

Further, Gaston Jaque first claimed possession of the subject property through his mother-in-law, and then through hired workers when the latter

¹³ Records of Civil Case 772, p. 44: Pre-Trial Order of RTC Branch 31, Calbayog City dated July 9, 2001.

¹⁴ TSN of testimony of Gaston Jaque taken on September 17, 2001, p. 9.

¹⁵ *Bernice Legaspi v. Spouses Rita and Francisco Ong*, G.R. No. 141311, May 26, 2005, 459 SCRA 122.

¹⁶ G.R. No. 155716, October 2, 2009.

passed away;¹⁷ not personally. It is also undisputed that the Jaques never installed a tenant on Lot 4089 and did not disturb the Solitarios' possession of the same.¹⁸ On this note, We agree with the finding of the RTC that the Jaques' alleged possession of the subject property is suspect and unsubstantial, and they never possessed the same in the concept of owners, viz:

Even as to the first half portion of the land allegedly sold by the defendants to the plaintiffs, the evidence too tends to show that the plaintiffs did not really possess it as owners. Plaintiffs' evidence with regards to their possession over this portion is very doubtful. According to plaintiff Gaston Jaque when he testified in Court, they possessed this portion through his mother-in-law till she died in 1992 or 1992: that when she died, they possessed it already through hired workers. However, in the statement of facts of the resolution of the public prosecutor in the case of Qualified Theft which plaintiffs filed against the defendants, it is clearly shown that the plaintiffs stated that the defendants took possession of the entire property since 1983 yet.

On the other hand, in this case, they are now claiming that it was actually in the year 2000 that the defendants bid claim on this land.

x x x x

Third, the fact that defendants' witness Leonora Solitarios [Felipe's sister] resides and has a house in the land in question without having been disturbed by the plaintiffs and the fact that the plaintiffs never have a tenant in the land even if they reside in Cebu City also show in some manner that they are not really the owners of the land, but the defendants.¹⁹

Not only is there a presumption that the deeds of sale are an equitable mortgage, it has been amply demonstrated by petitioners that the deed of sale is intended to be one of mortgage based on the proof presented by petitioners and propped up even by the admissions of respondents.

The intention of the parties was for the transaction to secure the payment of a debt

To stress, Article 1602(6) of the Civil Code provides that a transaction is presumed to be an equitable mortgage:

(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.

This provision may very well be applied in this case. There is sufficient basis to indulge in the presumption that the transaction between

¹⁷ TSN of testimony of Gaston Jaque taken on September 17, 2001, pp. 22 and 25.

¹⁸ *Rollo*, p. 78.

¹⁹ *Id.* at 77-78.

the parties was that of an equitable mortgage and that the spouses Solitarios never wanted to sell the same to the Jaques.

The foregoing presumption finds support in the following: *First*, the very testimony of Gaston Jaque and the documents he presented establish the existence of two loans, which the Jaques extended to the spouses Solitarios, that were secured by the subject property; and, *second*, the testimonies of the parties reveal that they came to an agreement as to how these loans would be paid.

The first loan was contracted when Gaston Jaque gave the spouses Solitarios ₱7,000.00 to help them redeem the subject property from PNB.²⁰ In effect, by extending the ₱7,000.00 financial assistance to the spouses Solitarios, Gaston Jaque took over the loan, became the lender and assumed the role of mortgagee in place of PNB.

Thereafter, the spouses Solitarios obtained a second loan from the Jaques amounting to ₱3,000.00. This is evidenced by an REM dated July 15, 1981 by virtue of which the spouses Solitarios mortgaged one-half of the subject property to the Jaques to secure the payment of said loan.

The parties testified that they entered into a verbal agreement on the sharing of the produce of the subject property. For his part, it seemed that Gaston Jaque wanted to impress upon the lower court that this sharing agreement was fixed as a condition for his allowing the Solitarios' continued possession and cultivation of the subject property. However, there is a strong reason to believe that this arrangement was, in fact, a payment scheme for the debts that the spouses Solitarios incurred.

During his testimony, Felipe Solitarios explained that after the Jaques gave him funds to redeem the property from PNB, they entered into an agreement on the sharing of the produce and that this arrangement would last until they shall have redeemed the land from the Jaques. We note that this assertion by Felipe Solitarios was never refuted on cross or re-cross examination. Felipe Solitarios explained—

DIRECT EXAMINATION BY

ATTY. MELINDA MARTIRES

Q When did Lilia Jaque give you the money to redeem the mortgage indebtedness from the Philippine National Bank?

A In 1976

Q How much did she give you?

A ₱5,000.00

²⁰ TSN of Jaque, p. 21.

Q After giving you the amount of ₱5,000.00 to be used to redeem the mortgage indebtedness, was there any agreement between you and Lilia Jaque?

A Our agreement was, on the produce of the riceland, she will be given $\frac{1}{4}$ and on the coconut land $\frac{1}{2}$.²¹

xxx xxx xxx

Q Where were the spouses when the land was already redeemed from the PNB?

A They were in Cebu.

Q So, to whom did you deliver their share of the produce of the land?

A To Yaning, the mother of Ma Lilia.

Q When did you start delivering the share of the plaintiff of the land in question?

A From the time I mortgaged this land to them.

Q You mean to say from 1976?

A Yes.

Q How many times did you deliver to the parents of the plaintiffs the share of the plaintiffs of the produce of the land?

A Every harvest, we deliver their share and everytime we make copra, we also deliver their share to Ma Yaning.

xxx xxx xxx

ATTY. MARTIRES

Q Per condition with the plaintiffs which you have told us a while ago, for how long will you deliver their share?

A Every harvest we have to give their share because we have not yet redeemed the land.

Q So there was no duration of your giving their share of the land?

A If I desire to redeem the land from them.²²

Furthermore, Gaston Jaque himself testified receiving a portion of the produce of the subject property precisely because of the loan covered by the July 15, 1981 REM.²³

It is, thus, clear from the foregoing that the Jaques extended two loans to the spouses Solitarios, who in exchange, offered to the former the subject property, not to transfer ownership thereto, but to merely secure the payment of their debts. This may be deduced from the testimonies of both Felipe Solitarios and Gaston Jaque, revealing the fact that they agreed upon terms for the payment of the loans, in particular, the sharing in the produce of the lot.

²¹TSN taken down during the trial on May 13, 2002. Direct Testimony of Felipe Solitarios, p. 6.

²²TSN of Direct Examination of Solitarios, p. 10.

²³TSN of Jaque, p. 32.

Verily, the fact that the parties agreed on payment terms is inconsistent with the claim of the Jaques that when the spouses Solitarios executed the questioned deeds of sale they had no other intention but to transfer ownership over the subject property.

Thus, there is ground to presume that the transaction between the parties was an equitable mortgage and not a sale. There is nothing in the records sufficient enough to overturn this presumption.

***The contracts of sale and mortgage
are of doubtful veracity***

Furthermore, an examination of the transaction documents casts doubts on their validity. As alleged by petitioners, their signatures therein appear to be forged. We distinctly observe that each of the three (3) documents bears different versions of petitioner Julia Solitarios' signatures. First, on the first page of the 1981 Deed of Sale, particularly on the space provided for Julia Solitarios to express her marital consent to the sale, the signature "Julia Torda Solitarios" appears.²⁴ What is strange is that in the acknowledgement page of the very same document, Julia Solitarios purportedly signed as "Julia T. Solitarios,"²⁵ which is obviously different from the signature appearing on the first page. Further, while the 1981 REM document contains the signature "Julia Turda,"²⁶ the 1983 Deed of Sale bears the signature "Julia Torda." These discrepancies suggest that the documents were signed by different persons.

Nevertheless, assuming *arguendo* that these documents were really signed by petitioners, there is reason to believe that they did so without understanding their real nature and that the Jaques never explained to them the effects and consequences of signing the same.

***In negotiating the transactions, the
parties did not deal with each other
on equal terms***

The Civil Code provisions that consider certain types of sales as equitable mortgages are intended for the protection of the unlettered such as the spouses Solitarios, who are penurious vis-à-vis their creditors.²⁷ In *Cruz v. Court of Appeals*,²⁸ the Court held -

Vendors covered by Art. 1602 usually find themselves in an unequal position when bargaining with the vendees, and will readily sign onerous contracts to get the money they need. Necessitous men are not

²⁴ Records, p. 79.

²⁵ Id. at 80.

²⁶ Id. at 81.

²⁷ *Matanguihan v. Court of Appeals*, G.R. No. 115033, July 11, 1997, 275 SCRA 380.

²⁸ *Cruz v. Court of Appeals*, G.R. No. 143388, October 6, 2003.

really free men in the sense 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 Art. 1602 seeks to guard against. The evident intent of the provision is to give the supposed vendor maximum safeguards for the protection of his legal rights under the true agreement of the parties.

Without doubt, the spouses Solitarios need the protection afforded by the Civil Code provisions on equitable mortgage. Certainly, the parties were negotiating on unequal footing. As opposed to the uneducated²⁹ and impoverished farmer, Felipe Solitarios,³⁰ Gaston Jaque, was a 2nd Lieutenant of the Armed Forces of the Philippines when he retired.³¹ Further, Felipe Solitarios was constantly in financial distress. He was constantly in debt and in dire financial need. That he borrowed money from the PNB twice, first in 1975 then in 1976, and mortgaged the subject property to the Jaques suggest as much.

While Felipe Solitarios was able to settle his 1975 loan and redeem the mortgage with his own money,³² he no longer had enough funds to redeem the subject property after obtaining a loan in 1976. Thus, he was impelled to borrow money from the Jaques to get his property back in 1981. Shortly after, on July 15, 1981, Felipe Solitarios, again in desperate need, borrowed money from Gaston Jaque and mortgaged to the latter a portion of the subject property.

It is, therefore, not difficult to imagine that Felipe Solitarios quickly consented to arrangements proposed to him by a seemingly trustworthy Gaston Jaque, and mindlessly signed instrumental documents that were never explained to him and he never fully understood but nonetheless assured him of fast cash and easy payment terms. What the court *a quo* wrote in this regard merits concurrence:

Still another fact which militates against plaintiffs' cause is their failure to prove during trial that they really endeavored to explain to the defendants the real nature of the contract they were entering into, it appearing that the defendants are of low education compared to them especially plaintiff Gaston Jaque who is a retired military officer. The law requires that in case one of the parties to a contract is unable to read (or maybe of low education), and fraud is alleged, the person enforcing the contract must show that the term thereof have been fully explained to the former (Spouses NenaArriola and Francisco Adolfo, et.al. vs. Demetrio Lolita, Pedro, Nena, Braulio and Dominga, all surnamed Mahilum, et. al. G.R. No. 123490, August 9, 2000).³³

²⁹ Rollo, p. 79.

³⁰ TSN of Solitarios, p. 2.

³¹ TSN of Jaque, p. 3.

³² TSN of cross-examination of Felipe Jaque, p. 15.

³³ Rollo, p. 79.

The law favors the least transmission of rights

It is further established that when doubt exists as to the true nature of the parties' transaction, courts must construe such transaction purporting to be a sale as an equitable mortgage, as the latter involves a lesser transmission of rights and interests over the property in controversy.³⁴ Thus, in several cases, the Court has not hesitated to declare a purported contract of sale to be an equitable mortgage based solely on one of the enumerated circumstances under Article 1602. So it should be in the present case.

In *Sps. Raymundo v. Sps. Bandong*,³⁵ the Court observed that it is contrary to human experience that a person would easily part with his property after incurring a debt. Rather, he would first look for means to settle his obligation, and the selling of a property on which the house that shelters him and his family stands, would be his last resort.

Here, the Court finds the spouses Solitarios' alleged sale of the subject property in favor of the Jaques simply contrary to normal human behavior. Be it remembered that the spouses Solitarios depended much on this property as source of income and livelihood. Further, they made use of it to obtain and secure badly needed loans. This property was so important to them that they had to borrow money from the Jaques to raise funds to ensure its redemption. Furthermore, even after the supposed sale, the spouses Solitarios remained tied to this land as they never left it to live in another place and continued tilling and cultivating the same. Thus, considering how valuable this land was to the spouses Solitarios, being their main, if not, only source of income, it is hard to believe that they would easily part with it and sell the same to another.

Furthermore, it is also difficult to understand why, after going through all the complications in redeeming the property from PNB, the spouses Solitarios would simply transfer this to the Jaques. It is inconceivable that the spouses Solitarios would sell their property just to pay the PNB loan. It is more believable that, if at all, they conveyed their land on a temporary basis only, without any intention to transfer ownership thereto and with the assurance that upon the payment of their debts, the same would be returned to them.

The only reasonable conclusion that may be derived from the execution of the Deeds of Sale in favor of the Jaques is to ensure that the Solitarios will pay their obligation.

³⁴ *Reyes v. Court of Appeals*, G.R. No. 134166, August 25, 2000, 339 SCRA 97.

³⁵ G.R. No. 171250, July 4, 2007.

*The transfer of the subject property
is a pactum commissorium*

Further, We cannot allow the transfer of ownership of Lot 4098 to the Jaques as it would amount to condoning the prohibited practice of *pactum comissorium*. Article 2088 of the Civil Code clearly provides that a creditor cannot appropriate or consolidate ownership over a mortgaged property merely upon failure of the mortgagor to pay a debt obligation,³⁶ viz.:

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

The essence of *pactum commissorium* is that ownership of the security will pass to the creditor by the mere default of the debtor. This Court has repeatedly declared such arrangements as contrary to morals and public policy.³⁷

As We have repeatedly held, the only right of a mortgagee in case of non-payment of debt secured by mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness. The mortgagor's default does not operate to automatically vest on the mortgagee the ownership of the encumbered property, for any such effect is against public policy, as earlier indicated.³⁸

Applying the principle of *pactum commissorium* to equitable mortgages, the Court, in *Montevirgen vs. CA*,³⁹ enunciated that the consolidation of ownership in the person of the mortgagee in equity, merely upon failure of the mortgagor in equity to pay the obligation, would amount to a *pactum commissorium*. The Court further articulated that if a mortgagee in equity desires to obtain title to a mortgaged property, the mortgagee's proper remedy is to cause the foreclosure of the mortgage in equity and buy it at a foreclosure sale.

In *Sps. Cruz vs. CA*,⁴⁰ the Court again reiterated that, in an equitable mortgage, perfect title over the mortgaged property may not be secured in a *pactum commissorium* fashion, but only by causing the foreclosure of the mortgage and buying the same in an auction sale. The Court held –

Indeed, all the circumstances, taken together, are familiar badges of an equitable mortgage. Private respondents could not in a pactum commissorium fashion appropriate the disputed property for themselves as they appeared to have done; otherwise, their act will not be countenanced

³⁶ *Montevirgen v. Court of Appeals*, No. L-44943, March 17, 1982, 112 SCRA 641.

³⁷ *Guerrero v. Yñigo, et al.*, 96 Phil. 37, 41-42 (1954).

³⁸ *Guanzon vs. Argel*, No. L-27706, June 16, 1970, 33 SCRA 474, 478-479.

³⁹ *Supra* note 36.

⁴⁰ G.R. No. 143388, October 6, 2003.

by this Court being contrary to good morals and public policy hence void. If they wish to secure a perfect title over the mortgaged property, they should do so in accordance with law, i.e., by foreclosing the mortgage and buying the property in the auction sale.

It does not appear, under the premises, that the Jaques availed themselves of the remedy of foreclosure, or that they bought the subject property in an auction sale after the spouses Solitarios failed to pay their debt obligation. What seems clear is that the Jaques took advantage of the spouses Solitarios' intellectual and educational deficiency and urgent need of money and made it appear that the latter executed in their favor the questioned Deeds of Sale, thereby automatically appropriating unto themselves the subject property upon their debtors' default.

The amount reflected in the 1981 Deed of Sale is telling. The sum of ₱7,000.00 representing the alleged purchase price of one-half of the subject property in the 1981 Deed of Sale is actually the amount advanced to the spouses Solitarios by way of loan. Other than the testimony of Gaston Jaque, there is no evidence showing that this purchase price was actually paid or that the subject property was bought in a foreclosure sale.

Further, it can be gleaned from the testimony of Gaston Jaque that when the spouses Solitarios failed to pay their loan of ₱3,000.00, reflected in the July 15, 1981 REM covering the remaining half of the subject property,⁴¹ the Jaques did not foreclose the mortgage and purchase the said lot in an auction sale. Rather, they supposedly bought the lot directly from the spouses Solitarios and offset the loan amount against a portion of the supposed purchase price they agreed upon.⁴²

Indubitably, the subject property was transferred to the Jaques in a prohibited *pactum commisorium* manner and, therefore, void. Thus, the foregoing transaction and the registration of the deeds of sale, by virtue of which the Jaques were able to obtain the impugned TCT No. 745 must be declared void.⁴³

Furthermore, given that the transaction between the parties is an equitable mortgage, this means that the title to the subject property actually remained with Felipe Solitarios, as owner-mortgagor, conformably with the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor.⁴⁴ Thus, Felipe Solitarios' ownership over the subject property is not affected by the fact that the same was already registered in the name of

⁴¹ TSN of Jaque, p. 32.

⁴² TSN of Jaque, pp. 33-34.

⁴³ See *A. Francisco Realty & Development Corp. v. Court of Appeals*, G.R. No. 125055, October 30, 1998.

⁴⁴ *Montevirgen vs. CA*, supra note 36.

the Jaques. The pronouncement in *Montevirgen v. Court of Appeals* is instructive:

x x x Equity looks through the form and considers the substance, and no kind of engagement can be allowed which will enable the parties to escape from the equitable doctrine adverted to. In other words, a conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be devised.

Finally, the circumstance that the original transaction was subsequently declared to be an equitable mortgage must mean that the title to the subject land which had been transferred to private respondents actually remained or is transferred back to petitioners herein as owners-mortgagors, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor (Art. 2088, New Civil Code).⁴⁵

Finally, We agree with the RTC that the mortgage debt of the spouses Solitarios had been fully paid. This holds true whether the amount of the debt is ₱12,000.00, as found by the RTC or ₱22,000.00, the amount which the Jaques claim they paid for the subject property. The RTC elucidated as follows -

2. *The total mortgage debt of Php12,000.00 which was the consideration in Exh. "G" is deemed totally paid.*

This finding is based on the last paragraph of Article 1602 of the New Civil Code of the Philippines which provides that "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." (underscoring ours)

If this Court will take at its face value plaintiffs' claim in their complaint that they get Php10,000.00 every quarter or Php40,000.00 a year from the coconut portion and Php5,000.00 every planting season or Php10,000.00 a year from the rice land portion of the subject land, then plaintiffs could have earned Php50,000.00 a year or more or less one million pesos already when they filed this case in the year 2000.

But this Court has given more credence to defendants' assertion that from 1976 to 2000, he was giving the one-half share of the plaintiffs from the proceeds of the copras and rice land to plaintiffs' alleged caretaker, Yaning. So, if the produce of the land in question as claimed by the plaintiffs is about Php50,000.00 a year, one-half (1/2) of it would be Php25,000.00 which is 25 times higher than the Php1,000.00 interest at 12% per year for the alleged purchase price of Php12,000.00 of the land in question. The Php24,000.00 excess interest would have already been sufficient to pay even the principal of Php12,000.00. Thus, clearly, the Php12,000.00 purchase price of the land should now be considered fully paid.


⁴⁵ Id. at 648.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed August 31, 2010 Decision and November 24, 2011 Resolution of the Court of Appeals in CA-G.R. CEB-CV No. 00112 are, thus, **SET ASIDE**. The Decision of the Regional Trial Court, Calbayog City Branch 21 in Civil Case No. 772 is **REINSTATED**, with modification that the reformation of the Deeds of Absolute Sale dated May 9, 1981 and April 26, 1983 is deleted as it is unnecessary, and that the transfer of the title to the name of petitioners shall be exempt from registration fees and taxes and other charges. As Modified, the Decision of the trial court shall read:

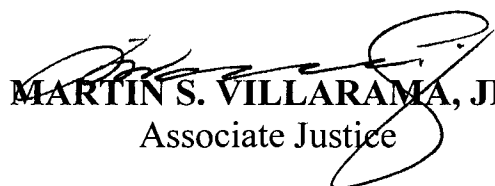
WHEREFORE, this Court dismisses the instant case and pronounces Judgment against plaintiffs and hereby orders the following:

1. TCT No. 745 in the name of spouses Gaston Jaque and Lilia Laure Jaque is declared void and cancelled. Furthermore, the Register of Deeds of the City of Calbayog is ordered to issue a new title in the name of petitioners Felipe Solitarios and Julia Torda without need of payment of registration fees, taxes, and other charges;
2. The total mortgage debt is considered and deemed totally paid pursuant to Article 1602 of the New Civil Code;
3. The amounts deposited to the Court by defendants Solitarios are ordered released to plaintiffs Spouses Gaston and Lilia Jaque minus lawful charges for their safekeeping, if any; and
4. The costs of the proceedings shall be paid by the plaintiffs.

SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice