95 Phil. 481

[G.R. No. L-6600. July 30, 1954]

HEIRS OF JUAN BONSATO AND FELIPE BONSATO, PETITIONERS, VS COURT OF APPEALS AND JOSEFA UTEA, ET AL., RESPONDENTS.

REYES, J.B.L., J.:

This is a petition for review of a decision of the Court of Appeals holding two deeds of donation executed on the first day of December, 1939 by the late Domingo Bonsato in favor of his brother Juan Bonsato and of his nephew Felipe Bonsato, to be void for being donations *mortis causa* accomplished without the formalities required by law for testamentary dispositions.

The case was initiated in the Court of First Instance of Pangasinan (Case No. 8892) on June 7, 1945, by respondents Josefa Utea and other heirs of Domingo Bonsato and his wife Andrea Nacario, both deceased. Their complaint (for annulment and damages) charged that on the first day of December, 1949, Domingo Bonsato, then already a widower, had been induced and deceived into signing two notarial deeds of donations (Exhibits 1 and 2) in favor of his brother Juan Bonsato and of his nephew Felipe Bonsato, respectively, transferring to them several parcels of land covered by Tax Declaration Nos. 5652, 12049, and 12052, situated in the municipalities of Mabini and Burgos, Province of Pangasinan, both donations having been duly accepted in the same act and documents. Plaintiffs likewise charged that the donations were mortis causa and void for lack of the requisite formalities. The defendants, Juan Bonsato and Felipe Bonsato, answered averring that the donations made in their favor were voluntarily executed in consideration of past services rendered by them to the late Domingo Bonsato; that the same were executed freely without the use of force and violence, misrepresentation or intimidation; and prayed for the dismissal of the case and for damages in the sum of P2,000.

After trial, the Court of First Instance rendered its decision on November 13, 1949, finding that the deeds of donation were executed by the donor while the latter was of sound mind, without pressure or intimidation; that the deeds were of donation *inter vivos* without any condition making their validity or efficacy dependent upon the death of the

donor; but as the properties donated were presumptively conjugal, having been acquired during the coverture of Domingo Bonsato and his wife Andrea Nacario, the donations were only valid as to an undivided one-half share in the three parcels of land described therein.

Thereupon the plaintiffs duly appealed to the Court of Appeals, assigning as primary error the holding of the court below that the donations are *inter vivos*; appellants contending that they were *mortis causa* donations, and invalid because they had not been executed with the formalities required for testamentary disposition.

A division of five of the Court of Appeals took the case under consideration, and on January 12, 1953, the majority rendered judgment holding the aforesaid donations to be null and void, because they were donations *mortis causa* and were executed without the testamentary formalities prescribed by law, and ordered the defendants-appellees Bonsato to surrender the possession of the properties in litigation to the plaintiffs-appellants. Two Justices dissented, claiming that the said donations should be considered as donations *inter vivos* and voted for the affirmance of the decision of the Court of First Instance.

The donees then sought a review by this Court.

The sole issue submitted to this Court, therefore, is the juridical nature of the donations in question. Both deeds (Exhs. 1 and 2) are couched in identical terms, with the exception of the names of the donees and the number and description of the properties donated. The principal provisions are the following:

> "ESCRITURA DE DONATION"
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> "Yo, Domingo Bonsato, viudo de Andrea Nacario, mayor de edad, vecino y residente del municipio de Agno, Pangasinan, I.F., por la presente declaro lo siguiente:
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> "Que mi sobrino Felipe Bonsato, casado, tambien mayor de edad, vecino de Agno, Pangasinan, I.F., en consideracion de su largo servicio a Domingo Bonsato, por la presente hago y otorgo una donacion perfecta e irrevocable consumada a favor del citado Felipe Bonsato de dos parcelas de terreno palayero como se describe mas abajo.

(Description omitted)

"Que durante su menor de edad de mi citado . sobrino Felipe Bonsato hasta en estos dias, siempre me ha apreciado y estimado como uno de mis hijos y siempre ha cumplido todas mis ordenes, y por esta razon bajo su pobriza sea movido mi sentimiento para dar una recompense de sus trabajos y aprecios a mi favor.

"Que en este de 1939 el donante Domingo Bonsato ha entregado a Felipe Bonsato dichos terrenos donados y arriba citados pero de los productos mientras vive el donante tomara la parte que corresponde como duefio y la parte como inquilino tomara Felipe Bonsato.

"Que en vista de la vejez del donante, el donatario Felipe Bonsato tomara posesidn inmediatamente de dichos terrenos a su favor.

"Que despues de la muerte del donante entrara en vigor dicha donacion y el donatario Felipe Bonsato tendra todos los derechos de dichos terrenos en concepto de dueiio absoluto de la propiedad libre de toda responsibilidad y gravamen y pueda ejercitar su derecho que crea conveniente.

"En Testimonio de Todo lo Cual, signo la presente en Agno, Pangasinan, I. F., hoy dia 1.° de Diciembre, 1939.

Domingo (His thumbmark) Bonsato

"Yo, Felipe Bonsato, mayor de edad, casado, Vecino de Mabini, Fangasinan, I.F., declaro por la presente que acepto la donacion anterior otorgado por Domingo Bonsato a mi favor.

(SGD.) FELIPE
BONSATO

SIGNADO Y FIRMADO EN PRESENCIA DE:

(SGD.) ILLEGIBLE (SGD.) ILLEGIBLE

The majority of the special divisions of five of the Court of Appeals that took cognizance of this case relied primarily on the last paragraph, stressing the passage:

"Que despues de la muerte del d&nante entrara en vigor dicha donation . . ."

while the minority opinion lay emphasis on the second paragraph, wherein the donor states that he makes "perfect, irrevocable, and consummated donation" of the properties to the respective donees, petitioners herein.

Strictly speaking, the issue is whether the documents in question embody valid donations, or else legacies void for failure to observe the formalities of wills (testaments). Despite the widespread use of the term "donations *mortis causa,*" it is well-established at present that the Civil Code of 1889, in its Art. 620, broke away from the Roman Law tradition, and followed the French doctrine that no one may both donate and retain ("donner at retenir ne vaut"), by merging the erstwhile donations mortis cavm with the testamentary dispositions, thus suppressing said donations as an independent legal concept.

> Art. 620. Donations which are to become effective upon the death of the donor partake of the nature of disposals of property by will and shall be governed by the rules established for testamentary successions.

Commenting on this article, Mucius Scaevola (Codigo Civl, Vol. XI, 2 parte, pp. 573, 575 says:

> "No ha mucho formulabamos esta pregunta: Subsisten las dona ciones mortis causa, como institucion independiente, con propia autonomia y propio compo jurisdiccional? La respuesta debe ser negativa.
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> * * * * * * *
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> Las donaciones *mortis causa* se consevan en el Codigo como se conserva un cuerpo fosil en las vitrinas de un Museo. Lai asimilacion entre las donaciones por causa de muerte y las transmissiones por testamento es perfecta."

Manresa, in his Commentaries (5th ed.), Vol. V. p. 83, expresses the same opinion:

> "La disposition del articulo 620 significa, por lo tanto: 1..', que han desaparecido las llamadas antes donaciones *mortis causa* por lo Que el Codigo no se ocupa de ellas en absoluto; 2.°, que toda dispo sicion de bienes para despues de la muerte sigue las reglas estable cidas para la sucesion testamentaria."

And Castan, in his Derecho Civil, Vol. IV (7th Ed., 1953), p. 176, reiterates:

> *(b) Subsisten hoy en nuestro derecho las donaciones mortis causa?* De lo que acabamos de decir se desprende que las donaciones mortis causa han perdido en el Codigo Civil su caracter distintivo y su naturaleza y hay que considerarlos hoy como una institucion suprimida, refundida en el legado * * *. Las tesis de la desaparicion de las donaciones mortis causa en nuestro Codigo Civil, acusada ya precedentemente por el proyecto de 1851 puede decirse que constituye una communis opinion entre nuestros expositores. incluso los mas recientes."

We have insisted on this phase of the legal theory in order to emphasize that the term "donations *mortis causa*" as commonly employed is merely a convenient name to designate those dispositions of property that are void when made in the form of donations.

Did the late Domingo Bonsato make donations *inter vivos* or dispositions *post mortem* in favor of the petitioners herein? If the latter, then the documents should reveal any or all of the following characteristics:

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive (Vidal *vs.* Posadas, 58 Phil., 108; Guzman *vs.* Ibea, 67 Phil., 633);

(2) That before his death, the transfer should be re vocable by the transferor at will, ad nutum; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed (Bautista *vs.* Sabiniano, G. R. L-4326, November 18, 1952);

(3) That the transfer should be void if the transferor should survive the transferee.

None of these characteristics is discernible in the deeds of donation, Exhibits 1 and 2, executed by the late Domingo Bonsato. The donor only reserved for himself, during his lifetime, the owner's share of the fruits or produce ("de los productos mientras viva el donante tomara la parte que corresponde como dueño"), a reservation that would be unnecessary if the ownership of the donated property remained with the donor. Most significant is the absence of stipulation that the donor could revoke the donations; on the contrary, the deeds expressly declare them to be "irrevocable", a quality absolutely incompatible with the idea of conveyances mortis causm where revocability is of the essence of the act, to the extent that a testator can not lawfully waive or restrict his right of revocation (Old Civil Code, Art. 737; New Civil Code, Art. 828).

It is true that the last paragraph in each donation contains the phrase "that after the death of the donor the aforesaid donation shall become effective" (que despues de la muerte del donante entrara en vigor dicha donacion"). However, said expression must be construed together with the rest of the paragraph, and thus taken, its meaning clearly appears to be that after the donor's death, the donation will take effect so as to make the donees the absolute owners of the donated property, free from all liens and encumbrances; for it must be remembered that the donor reserved for himself a share of the fruits of the land donated. Such reservation constituted a charge or encumbrance that would disappear upon the donor's death, when full title would become vested in the donees.

> "Que despues de la muerte del donante entrara en vigor dicha donacion y el donatario Felipe Bonsato tendra todos los derechos de dichos terrenos en concepto de dueiio absoluto de la propiedad lib re de toda responsibilidad y gravamen y puede ejercitar su derecjio que crea conveniente."

Any other interpretation of this paragraph would cause it to conflict with the irrevocability of the donation and Its consummated character, as expressed in the first part of the deeds of donation, a conflict that should be avoided (Civ. Code of 1889, Art. 1285; New Civil Code, Art. 1374; Rule 123, sec. 59, Rules of Court).

> "Que mi sobrino FELIPE BONSATO, casado, tambien mayor de edad, vecino de Agno, Pangasinan, I. F., en consideration de su largo servicio a Domingo Bonsato, por la presente hago y otorgo una donacion perfecta e irrevocable

> consumada a favor del citado Felipe Bonsato de dos parcelas de terreno palayero como se describe mas abajo."

In the cases held by this Court to be transfers *mortis causa* and declared invalid for not having been executed with the formalities of testaments, the circumstances clearly indicated the transferor's intention to defer the passing of title until after his death. Thus, in Carino *vs.* Abaya, 70 Phil., 182, not only were the properties not to be given until thirty days after the death of the last of the donors, but the deed also referred to the donees as "those who had been mentioned to inherit from us", the verb "to inherit" 'clearly implying the acquisition of property only from and after the death of the alleged donors.

In Bautista *vs.* Sabiniano, 49 Off. Gaz., 549; 92 Phil., 244, the alleged donor expressly reserved the right to dispose of the properties conveyed at any time before his death, and limited the donation "to whatever property or properties left undisposed by me during my lifetime", thus clearly retaining their ownership until his death. While in David *vs.* Sison, 42 Off. Gaz. (Dec. 1946) 3155, the donor not only reserved for herself all the fruits of the property allegedly conveyed, but what is even more important, specially provided that "without the knowledge and consent of the donor, the donated properties could not be disposed of in any way", thereby denying to the transferees the most essential attribute qf ownership, the power to dispose of the properties. No similar restrictions are found in the deeds of donation involved in this appeal.

That the conveyance was due to the affection of the donor for the donees and the services rendered by the latter, is of no particular significance in determining whether the deeds Exihibits 1 and 2 constitute transfers *inter vivos* or not, because a legacy may have identical motivation.

Nevertheless, the existence of such consideration corroborates the express irrevocability of the transfers and the absence of any reservation by the donor of title to, or control over, the properties donated, and reinforces the conclusion that the act was inter vivos. Hence, it was error for the Court of Appeals to declare that Exhibits 1 and 2 were invalid because the formalities of testaments were not observed. Being donations *inter vivos*, the solemnities required for them were those prescribed by Article 633 of the Civil Code of 1889 (reproduced in Art. 749 of the new Code, and it is undisputed that these were duly complied with. As the properties involved were conjugal, the Court of First Instance correctly decided that the donations could not affect the half interest inherited by the

respondents Joaefa Utea, et al. from the predeceased wife of the donor.

The decision of the Court of Appeals is reversed, and that of the Court of First Instance is revived and given effect. Costs against respondents.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, and *Concepcion, JJ.,* concur.

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