G.R. No. L-11240

**[ G.R. No. L-11240. February 13, 1958 ]**

**CONCHITA LIGUEZ, PETITIONER VS. THE HON. COURT OF APPEALS, MARIA NGO VDA. DE LOPEZ, ET. AL., RESPONDENTS.**

**RESOLUTION ON THE APPELLEE'S**

**MOTION TO RECONSIDER**

**REYES, J.B.L., J.:**
Against the decision of this Court holding the appellees, in their quality of successors of the late Salvador F. Lopez, Barred from questioning as immoral the donation aade by said deceased in favor of appellant Conchita Liguez, said appellees have interposed a notion for reconsideration praying us to declare:

1. That the donation in question, being with an illicit cause, is null and void and inexistent, and produced no effects whatsoever.

2. That the pari delicto rule should apply.
3. That what may preclude the deceased donor from setting up the illegality cannot preclude his heirs.

4. That the appellant is in estoppel.

Concerning the first proposition, this
Court has declared the donation to be tainted by immoral (i.e. illegal) causa, which necessarily involves the consequence that it is void and of no effect. Nevertheless, the court was also bound to apply Articles 1305 and 1306 of the Civil Code of 1889 (being the law in the case)

and under said articles, nullity of contracts due to illegal consideration or subject matter, when executed (and not merely executory) ,does produce the

effect of barring any action by a guilty party to recover what it has already given under the contract.

> "Art.1305. When the nullity arises from the illegality of the consideration or of the subject-matter of the contract, if the fact constitutes a crime or misdemeanor common to both contracting parties, neither shall be entitled to maintain an aetion against the other, and criminal proceedings shall be instituted against them; and, furthermore, the things or money which may have been the subject-matter of the contract shall be disposed of in accordance with the rules prescribed by the Penal Code concerning the effects of a crime or misdemeanor and the instruments used in its commission.
>
> This provision shall be applicable to cases in which one only of the contracting parties has been guilty of a crime or misdemeanor, but the innocent party may recover anything he may have given and shall not be bound to fulfill any promise he may have made."
>
> "Art. 1306. If the act which constitutes the illicit consideration is neither a crime nor a misdemeanor, the following rules shall be observed:
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> 1. When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, or enforce the performance of the undertaking of the other party;
>
> 2. When only one of the contracting parties is guilty he cannot recover anything which he may have given by virtue of the contract, nor enforce the performance of any undertaking in his favor. The other party, if he has had nothing to do with the illicit consideration, may recover anything which he may have given without being obliged to perform any undertaking he may have assumed."

These articles make it plain that in so far as the guilty is concerned, his

act of conveying property pursuant to tan illicit contract operates to divest him of the ownership of the conveyed property, and to bar him from recovering it from his transferee, just as if the transfer were through a bargain legal in its inception. Repugnant as immoral bargains are, the law deems it more repugnant that a party should invoke his own guilt as a reason for relief from a situation he deliberately entered: "Nemo auditur propriam turpitudinem allegans". The foregoing serves to explain why the tainted conveyance, to the extent that it has been carried
out, becomes conclusive as between the guilty parties, even if without effect against strangers without notice; and why a guilty party may nct ask the courts for a restoration to the status quo ante.[1]

The argument that appellant's suit to recover the property amounts to an enforcement of the illegal contract itself fails to take into account the detail that the donation by Lopez to appellant was a full and complete act of conveyance. Donation, it must be remembered, is one of the modes of acquiring ownership; and the retention of the donated land by the donor or his privies can not deprive the donation of its transferring effect, either because donation does net need te be completed by tradition (since Art. 609 prescribes that "ownership and rights therein are acquired and transmitted by donation, succession-and in consequence of certain contracts by tradition, "thereby implying that donation is not one of the contracts requiring tradition), or else because the execution of the notarial deed is equivalent to the physical tradition of the property, as expressly provided by par. 2 of Article 1462 of the Code of 1889. True it is that the decisions of this Court (Addison vs. Felix, 39 Phil. 404, etc.) declare that such tradition "per chartam" is ineffective where the thing conveyed was at the time in the physical possession of third perons; but the possession of the donor or of his family can in wise be considered possession by strangers to the conveyance.

The donation being regular on its face, the refusal of appellees to surrender the donated property is in itself an attack in the validity of the gift made by their predecessor Salvador F. Lopez. Note well that appellant Liguez does not seek specific performanee of the donation: the latter has been already completely executed, and no further action is required. The basis of appellant's complaint is not an executory contract to convey, but the ownership resulting from the completed conveyance; and that ownership carries with it the right tc

possession (jus possidendi) that the appellees seek to withhold. To retain possesion of the thing donated, appellees must defeat the donation; to defeat the donation they invoke its illegality, and this Court has ruled that they can not do so, because their predecessor was barred by law from so doing.

The debarring of appellees, qua successors and privies of the deceased donor, Salvador F. Lopez, is not predicated (as appellees erroneously believe) on the technical rules of estoppel, but on one more basic and fundamental: that the heir or successor, his quality as such, can not have a better right than the predecessor whom he replaces. The justice of this principle has been recognized by both the civil and the common law. "Nemo plus juris ad alium transferee potest quam ipse habet"; one can not transfer to another more rights than he has himself, as noted by Lord Coke in his Commentaries on Littleton (309b) virtually reiterating the of the Digest (50,17,54) and the Partidas (Part. VII, Tit. 34, rule 12) and pithily condensed in the vulgar "Nemo dat quod non habet". With particular reference to a deceased's contracts, Digest restates (50, 17, 143, De regulis juris) the consequent principle due to Ulpians "Quod ipsis qui contraxerunt. obstat, successoribus eorum obstabit": what bars those who contracted will likewise bar their successors. These maxims are net only grounded on common sense, but result from the very nature of succession as a mere derivative mode of acquiring rights. In consequence, this Court held that the appellees may attack the donation only if they can base its invalidity upon reasons independent of their quality as heirs or successors of the donor; and this is likewise true of the widow. Such recourse was reserved in our main decision.

The contention that the *pari delicto* rule should have been applied to this case deliberately ignores the important fact emphasized in our main decision, to wit: that the appellant Liguez was a minor of sixteen at the time the contract was made, while Lopez was of mature years and experience. No authority has been called to our attention holding that the guilt of a minor should be judged with severity equal to the guilt of an adult. It is well known that minors occupy a privileged position in law; and the law's tender care for them is emphasized by Art. 1415 of the new Civil Code. At any rate, the point is unimportant, because the donation having been fully executed, even if the parties were held to be in *pari delicto* the action of the donor or his privies ta recover the conveyed property and return to the status quo would remain

barred by Arts. 1305 and 1306.

The ruling in the cases of Velasquez vs. Biala, 18 Phil. 231; Perizuelo vs. Benedicto, 9 Phil. 621; Pamittan vs. Lasam, 60 Phil. 908; and Camagay vs. Lagera, 7 Phil. 397, holding a donation of real estate to be invalid if made in private writing, has no application to the case at bar, wherein the essential formalities prescribed by statute were duly observed. A donation being a formal or solemn act, it does not exist in law if the formalities prescribed are not accomplished; and being thus inexistent, it is open to attack even by the parties thereto. But the donation in the present case is not inexistent but illegal, and specific articles of the Civil Code command that neither party thereto may be heard to invoke its unlawful character as a ground for relief. It is not possible to ignore this difference between true inexistence and illegality under the Civil Code of 1889.

Appellees also rely on the provisions of Art. 4 of the Civil Code to the effect that-

> "Acts performed contrary to the provisions of law are void, except in the cases where the law itself provides for their validity."

to support the thesis that donations of conjugal property by the husband without his wife's consent being forbidden by Art. 1413, the donation in favor of appellee should net be given effect. This argument is, however, untenable because of the terms of Art. 1419:

> "Art. 1419. The inventory shall include, for the purpose of collating them, a statement of any sums which, having been paid by the conjugal partnership, are to be deducted from the wife's dowry or from the capital of the husband, in accordance with Articles 1366, 1377, and 1427.
>
> The value of any gifts or alienations which, in accordance with Article 1413, are to be deemed illegal or fraudulent, shall also be collated."

The second paragraph of said article shows that the lawmaker does not view

the donations made by the husband without the consent cf the wife as void, but merely fraudulent, subject to collation upon liquidation of the conjugal partnership and deduction of its value from the donor's share in the conjugal profits. This conclusion is supported not only by the commentators but also by the total absence in the Code of 1889 of any provision authorizing the wife to recover the property donated during the existence of the conjugal partnership, in contrast to Art. 173 of the new Civil Code. The donation now in question, therefore, falls within the exception of Art. 4 rather than its general rule.

Finally, the rule of estoppel by laches can not apply to prevent enforcement of the principle that a party to an illegal contract can not recover what he has given pursuant thereto, for the latter is a rule of superior public policy.

WHEREFORE, the motion to reconsider is denied.

*Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia,* and *Felix, JJ.,* concur.

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