

PACITA ORTIZ, ET AL., PETITIONERS, VS. THE COURT OF APPEALS AND ANDRES BASADA, RESPONDENTS

G.R. No. L-7307. May 19, 1955

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

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

Pacita Ortiz and Cresencia Ortiz pray for a review of the decision of the Court of Appeals in its CA-G. R. No. 7691-R, dismissing their complaint against Andres Basada for recovery of a parcel of land in Lapinig, Samar, described as follows:

"Terreno cocalero ubicado en el municipio de Lapinig, Samar, lindante al Norte—Basilio Piangdon, ahora Pedro Mojica; al Este—Eugenio Montibon, ahora solar de la escuela; al Sur—Colina; y al Oeste—Octavia Anacta, ahora Donate Abique, con un area. de 3,200 m.c, poco mas o menos avaluado en P100.00 bajo el Tax No. 4649." (Dec. CA. p. 1).

As determined by the Court of Appeals, the parcel of land in question belonged originally to the spouses Bonifacio Yupo and Vicenta de Guerra. On April 19, 1940, the owners donated the lot (among others) to their grandchildren, petitioners Ortiz,, by public document acknowledged before Notary Public Liberato Cinco, and couched in the following terms:

"DEED OF DONATION

Let it be Known by anybody who Might see This:

That, we, Bonifacio Yupo and Vicenta de Guerra, Married to each other, both of age, residing at barrio Lapinig, Palapag, Samar, Philippine and Cresencia Ortiz-Pinangay, Alejandro Ortiz and Pacita Ortiz, also of age all of them, the first one residing at the same place and the two others at barrio Potong, Palapag, Samar, have agreed on the following:

That Bonifacio Yupo and Vicenta de Guerra, for and in consideration of the liberality and love to their grandchildren, Cresencia Ortiz-Pinangay, Alejandro Ortiz and Pacita Ortiz, announce to everybody that that at their free will give and donate to Cresencia Ortiz-Pinangay, Alejandro Ortiz and Pacita Ortiz three (3) parcels of land which are as follows:

Tax No. 19738, Awang, Lapinig, Palapag, Samar, bounded in the North—Jacoba Enage; East—Jacoba Enage and Swamp, South—Awang Stream; and on the West—Fermin Espinisin, Teresa Cesesta and Francisco Donceras.

Tax No: 4649, Lapinig, Palapag, Samar; bounded in the North—Basillio Piangdon; on East—Eugenio Montibon; and the South— Colina; and the West—Octavio Anacta.

Tax No. 12144, Potong, Palapag, Samar, bounded on the North—Bo, de Potong; on the East—Playa Mar; South—Juan Sidro; on the West—Juan Sidro.

We trust that the donees would divide the lands donated to them by themselves.

That Cresencia Ortiz-Pinangay, Alejandro Ortiz and Pacita Ortiz, hereby accept this donation intervivos of the above-mentioned three (3) parcels of land and that they hereby manifest their gratefulness to the sympathy, love and liberality and benevolence of Bonifacio Yupo and Vicenta de Guerra.

"In truth hereof, we have placed our names below this 19th day of April, 1940 at Palapag, Samar.

(Sgd.) Cresencia Ortiz-Pinangay

(Sgd.) Alejandro Ortiz (Fdo.) Bonifacio Yupo

(Sgd.) Pacita Ortiz (Fdo.) Vicenta de Guerra

Signed in the presence of:

Signature illegible

Signature illegible

Acknowledgment by Notary Public Liberato B. Cinco.

(Exhibit D-2, trans, of Exh. D)" (Dec. CA, pp. 2-3).

The donors were duly notified of donee's acceptance. Alejandro Ortiz died without issue in Capas, Tarlac, as a prisoner of war, during the last occupation by the Japanese.

It appears further that on August 14, 1941, the donor spouses executed another notarial deed of donation of the same property, in favor of Andres Basada, nephew of the donor Vicenta de Guerra, subject to the condition that the donee would serve and take care of the donors until their death. This donation was also duly accepted by the donee in the same instrument (Exh. 1-a).

In 1947, the first donee (Ortiz) filed revindictory action against the second donee (Basada) alleging that in 1946, the latter entered and usurped the land donated to and owned by them, and refused to vacate the same. Basada claimed ownership of the land on the ground that the donation in favor of the Ortizes had been revoked. The Court of First Instance of Samar upheld Basada's claim and dismissed the complaint, on the ground that the/donees Ortiz had abandoned the donors "to public mercy", with "most base ingratitude and highly condemnable heartlessness".

Upon appeal to the Court of Appeals, the latter correctly held that the donation in favor of appellants Ortiz had been duly perfected in accordance with law, and it should "stand until after its revocation should have been asked and granted in the proper proceedings," citing our decision in *Ventura vs. Felix*, 26 Phil. 500-503. It added that the subsequent donation of the property to Basada "is not, certainly, the way a prior donation should be revoked."

Nevertheless, the Court of Appeals upheld the dismissal of the complaint, holding that:

"However, to all appearances, the donors in the instant case had always reserved for themselves the possession and use of the properties donated. This may be inferred from the fact that the Ortizes were in possession of the land in question from the time it was donated to them until the donors left their house, and that later, we believe, Basada took possession of it after the donation thereof in his favor was signed and the donors went to live with him. The recovery of possession of the land sought by plaintiffs is, therefore, premature because one of the donors in behalf of whom Basada is now in occupancy of the property is still living. At least he should have been included in the case to determine whether he really had parted definitely not only with the ownership but also with the use and possession of the land." (Dec. CA p. 9).

We agree with the petitioners that the conclusion thus drawn is unwarranted. From the time the public instrument of donation (Exh. D) was executed and acknowledged by donors and donees in 1940, the latter acquired not only the ownership but also the possession of the donated property, since the execution of a public instrument of

conveyance is one of the recognized ways in which delivery (tradition) of lands may be made (Civ. Code of 1889, Art. 1463; new Civil Code, Art. 1498), unless from the terms of the deed, the contrary is expressed or inferable. In the present case, the donation (Exh. D) is on its face absolute and unconditional, and nothing in its text authorizes us" to conclude that it was limited to the naked ownership of the land donated. Considering that under the law, a donation of land by Public instrument is required to express the charges that the donee must assume (old Civil Code, Art. 633; new Civil Code, Art. 749), the absence in the deed of any express reservation of usufruct in favor of the donors is proof that no such reservation was ever intended.

The mere fact that the donors remain in the property after/donating it is susceptible of varied explanations and does not necessarily imply that possession or usufruct was excluded from the donation. And the donees Ortiz having been vested with ownership and attendant possession since 1940, it is clear that the subsequent donation of the property in favor of respondent Basada conferred on the latter no right whatever over the property as against the former donees.

Wherefore, and without prejudice to any action of revocation that may lawfully appertain to the donors, the decisions of the Court of Appeals and of the Court of First Instance of Samar dismissing the complaint are hereby reversed, and the respondent Andres Basada is sentenced to restore possession to petitioners Cresencia and Pacita Ortiz.. The records of the case are ordered remanded to the Court of origin for assessment of the damages suffered by the petitioners. Cost against respondent Andres Basada.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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