

## **CONSOLACION L. RAMOS, ADMINISTRATRIX AND APPELLANT, VS. BENIGNO A. CAOIBES, ATTORNEY-IN-FACT AND APPELLEE.**

*G.R. No. L-5142. February 26, 1954*

Ponente: JUGO, J.

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### **JUGO, J.:**

This is an appeal by Consolacion L. Ramos as administratrix of the estate of Concepcion Ramos from an order issued by the Court of First Instance of Batangas on June 15, 1951.

On August 16, 1948, Concepcion Ramos Dipusoy executed before a notary public two documents which have been marked as Annex "A" and Annex "B."

Annex "A" is a power of attorney which reads as follows:

### **"SPECIAL POWER OF ATTORNEY**

#### **KNOW ALL MEN BY THESE PRESENTS:**

"That I, Concepcion Ramos Dipusoy, of legal age, single, Filipino citizen and resident of Balayan, Batangas, have made, constituted and appointed, and by these presents do make, constitute and appoint Mr. Benigno A. Caoibes, also of legal age, married, Filipino citizen and at present residing at 1047 Antipolo Street, Sampaloc, Manila, my true and lawful attorney-in-fact, for me and in my name, place and stead, to collect any amount due me from the Philippine War Damage Commission, regarding my claim filed for my properties that were lost during the last war in Balayan, Batangas, to cash checks, warrants and to sign receipts, vouchers, documents which shall be necessary to the said purpose.

"That I am giving and granting unto my said, attorney-in-fact Benigno A. Caoibes, full and absolute power and authority to do and perform all any every act or thing whatsoever to be done necessary in and about the premises, as fully to all intents and purposes as I might or could myself do if I were personally present, and hereby confirming and ratifying all that my said attorney-in-fact shall lawfully do or cause to be done and by virtue of these presents.

"IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of August, 1948, in the City of Manila, Philippines.

"(Miss) CONCEPCION RAMOS DIPUSOY

"Signed in the presence of:

1. (Sgd.) CONSOLACION L. RAMOS

Witness

2. (Sgd.) SOCORRO L. RAMOS

Witness

"REPUBLIC OF THE PHILIPPINES s.

CITY OF MANILA s.

"Before me a Notary Public for and in the City of Manila, personally appeared Miss Concepcion Ramos Dipusoy, with Residence Certificate No. A-3115097, issued at Balayan, Batangas, on February 26, 1948, who is known to me to be the same person who executed the foregoing power of attorney in favor of Mr. Benigno A. Caoibes, and acknowledged to me that the same is her free and voluntary act and deed.

"IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of August, 1948, in the City of Manila and affixed my Notarial Seal.

(Sgd.) ARTEMIO ABAYA

Notary Public

My commission expires on December 31, 1948"

Annex B is an affidavit of the following tenor:

"REPUBLIC OF THE PHILIPPINES s.

CITY OF MANILA s.

### **AFFIDAVIT**

"That I, CONCEPCION RAMOS DIPUSOY, of legal age, single, Filipino citizen, and resident of Balayan, Batangas, after having been duly sworn to in accordance to law depose and say:

"That in case payment of any amount or amounts collected from the Philippine War Damage Commission, my nephew and at the same time attorney-in-fact, shall give my sister Teopista Vda. de Basa one-half (1/2), of the corresponding amount and the other half (1/2) shall be given to my nephew and niece Mr. and Mrs. Benigno A. Caoibes.

"IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of August, 1948, in the City of Manila.

(Sgd.) CONCEPCION RAMOS DIPUSOY

Signed in the presence of:

(Sgd.) CONSOLATION L. RAMOS

(Sgd.) SOCORRO L. RAMOS

"Subscribed and sworn to before me this 16th day of August, 1948, in the City of Manila. Affiant have exhibited her residence certificate No. A-3115097, issued at Balayan, Batangas, on February 26, 1948.

(Sgd.) ARTEMIO ABAYA

Notary Public

My Commission expires on December 31, 1948"

Concepcion Ramos died on August 19, 1948, leaving a will dated January 7, 1927 admitted to probate on October 4, 1948, in which she ordered that the credits due to her be distributed among the children of the deceased Antonino Ramos, namely, Consolacion, Ramon, Socorro, and Cirila.

One year before she died, Concepcion Ramos filed with the War Damage Commission a claim which was identified as No. 411773. On August 31, 1948, the Commission issued check No. 348444, in the amount of P501.62, payable to the deceased Concepcion Ramos. This check was returned to the Commission and substituted by the latter with check No. 564614, on November 10, 1948, for the same amount, but payable to Benigno A. Caoibes, who had presented to said entity Annexes "A" and "B", above mentioned, in order to exchange the first check No. 564614, which he cashed for himself.

Annexes "A" and "B" were presented to the Commission by Caoibes after the death of Concepcion. The administratrix, Consolacion L. Ramos, the appellant herein, discovered the collection made by Caoibes when she saw the note "previous payment" which appeared in the account sent to her by the Commission on October 13, 1950. She filed a motion with the court asking that Caoibes be ordered to deposit the sum of P501.62 with the clerk of court. Caoibes answered the motion admitting that after the death of Concepcion, he presented Annexes "A" and "B" to the Commission and received in cash the sum of P501.62, amount of the second check, above mentioned, but stating that he was willing to deliver to the clerk the sum of P250.81. He contended that, by virtue of Annex "A", and Annex "B", he had the right to retain, for himself, half of the sum of P501.62.

The court below issued the following order:

"Considering the motion of the administratrix praying that Atty. Benigno A. Caoibes turn over the amount of P501.62, representing war damage claim, to the office of the Clerk of this Court, and the answer of Atty. Caoibes to the said motion and this Court having had the opportunity to personally confer with the parties and Attorney Caoibes being agreeable to turn over the amount of P250.81 to the Clerk of this Court in final settlement of this matter—it is ordered that the said Atty. Caoibes deposit the amount of P250.81 with the Clerk of this Court, the said amount to be at the disposal of the administratrix and the other parties in this intestate proceedings. With this order, the matter before this Court is deemed closed.

"SO ORDERED.

Batangas, Batangas, June 15, 1951.

(Sgd.) E. SORIANO

Judge"

On July 3, 1951, the administratrix filed a motion for reconsideration, which was denied by the order of the court dated July 12, 1951. (In the printed Record on Appeal the date appears to be July 12, 1950, but it is evidently a mistake and it should be July 12, 1951.)

We will now proceed to consider the two documents.

Annex A is only a power of attorney. Caoibes, as agent, had the obligation to deliver the amount collected by

virtue of said power to his principal, Concepcion, or, after her death, to the administratrix of her estate, Consolacion.

There is absolutely no cession of rights made in favor of Caoibes in Annex "A", and under Article 1711 of the old Civil Code (which was in force at the time of the transaction) , the contract of agency is presumed to be gratuitous, unless the agent is a professional agent. There is no proof that Caoibes was such. Furthermore, according to Article 1732 of said Code, an agency is terminated, among other causes, by the death of the principal or of the agent. When Caoibes made use of the power of attorney, his principal, Concepcion, was already dead.

Coming now to Annex "B", the alleged document of donation, it should be noted that it is not a donation of real but of personal property and is governed by article 632 of the old Civil Code, which reads as follows:

"Donations of personal property may be made verbally or in writing.

"Verbal donation requires the simultaneous delivery of the gift. In the absence of this requisite the donation shall produce no effect, unless made in writing and accepted in the same form."

The alleged donation was made in writing but it has not been accepted in the same form, and, consequently, has no validity. It cannot be considered a donation upon valuable consideration, for no services nor any valuable consideration had passed from the donees to the donor. The mere fact that Caoibes collected the claim from the War Damage Commission is not such a service as to require compensation. Caoibes did not even prepare the claim.

The court below in its order of June 15, 1951, said that it "having had the opportunity to personally confer with the parties and Attorney Caoibes being agreeable to turn over the amount of P250.81 to the Clerk of this Court in final settlement of this matter—it is ordered that the said Atty. Caoibes deposit the amount of P250.81 with the Clerk of this Court, the said amount to be at the disposal of the administratrix and the other parties in these intestate proceedings. With this order, the matter before the administratrix never consented to the reduction of the claim.

In view of the foregoing, the order appealed from is reversed and Benigno A. Caoibes is ordered to deposit with the Clerk of Court of Batangas the sum of P501.62 to be at the disposal of the administratrix in her capacity as such, without pronouncement as to costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo, Labrador, Concepcion, and Diokno, JJ., concur.

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