DECISIONS / SIGNED RESOLUTIONS · NINETEENTH DIVISION · OCTOBER 8, 2010

# HEIRS OF ASUNCION S. MELGAR, NAMELY: LAZARO DE LOS SANTOS, BENJAMIN DE LOS SANTOS, JR., CONCHITA LABASBAS, FELICIDAD ENCARNADO, PETITIONERS-APPELLANTS, VS. PIO ANTONIO M. BORREL...

Ponente: LOPEZ, J.

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**LOPEZ, J.:**

The Case

Before this Court is an appeal filed under Rule 41 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision[1] of the Regional Trial Court, Branch 36 of Carigara, Leyte, dated 8 October 2010, dismissing Petitioners-Appellants' Petition[2] for lack of merit and its Order[3], dated 28 January 2011, denying their twin motions labeled as Motion for Reconsideration and Motion for New Trial[4].

FACTUAL ANTECEDENTS

The present case arose out of a dispute over several parcels of land owned by the late Asuncion S. Melgar which were donated to herein Respondent-Appellee by the former.

The late Asuncion S. Melgar (herein referred as "Asuncion") was married to Pio Melgar. She died on 17 January 1993, a widow and without any issue. At the time of her death, she left several personal and real properties including the parcels of land involved in the present controversy.

Petitioners-Appellants are the siblings of Asuncion except Conchita Labasbas. They claimed to be the heirs of Asuncion and as such, they are entitled to inherit her properties as the latter died without any issue.

On the other hand, Respondent-Appellee is the step-grandson of Asuncion and the donee of the fifteen (15) parcels of land subject matter of the present controversy which were donated to him by the former.

It appears that on 14 October 1992, Asuncion executed a Deed of Donation[5] in favor of Respondent-Appellee involving fifteen (15) parcels of land. The latter accepted the donation and his acceptance was made in the same document. The deed was prepared and notarized by Atty. Napoleon F. Ronquillo, Sr. (herein referred as "Atty. Ronquillo).

More than ten (10) years after the execution of the deed of donation or on 26 November 2002, Petitioners-Appellants filed a Petition[6] with the trial court for declaration of nullity of donation, injunction, with prayer for the issuance of a TRO and damages. They alleged that the deed of donation is fake, spurious and a falsity. Moreover, the late Asuncion Melgar never mentioned any donation made by the latter during her lifetime, according to Petitioners-Appellants. They added that the estate of Asuncion is currently under judicial settlement with the trial court and the fifteen (15) parcels of land subject matter of the deed of donation were included in the inventory of properties prepared by them.

On 27 January 2002, Respondent-Appellee filed his Answer with Counterclaim[7]. He vehemently denies Petitioners-Appellants' allegation that the deed of donation is fake and spurious. He maintains that he is the



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lawful and legal owner of the subject properties which he acquired by virtue of a deed of donation executed by Asuncion and duly notarized by the late Atty. Ronquillo.

In their Pre-Trial Brief[8], Petitioners-Appellants contended that upon their investigation they found out that Atty. Ronquillo, the lawyer who notarized the questioned deed of donation, was not duly commissioned to act as a notary public in the year 1992. Consequently, the donation was null and void since it was not made in a public instrument as mandated by law. The deed of donation remained a private instrument due to Atty. Ronquillo's lack of authority to perform notarial acts, they added.

Thereafter, trial on the merits ensued. Lazaro de los Santos testified for and in behalf of Petitioners-Appellants. The latter also presented Atty. Blanche Salino, Atty. Clinton Nuevo and Atty. Fidelina Grapilon, clerks of court of the different Regional Trial Court branches in Tacloban City, Ormoc City and Carigara, Leyte, respectively. Their testimonies were confined to the identification of the Certifications[9] that they respectively issued to the effect that Atty. Ronquillo was not commissioned as a notary public in the year 1992. The testimonies of the other clerks of court who issued the same certifications were dispensed with upon agreement of both counsels.

On the other hand, Respondent-Appellee Pio Antonio Borrel testified for and in his behalf. He stated that he had no knowledge of Petitioners-Appellants' allegation that Atty. Ronquillo was not commissioned as a notary public at the time of the execution of the deed of donation. He added that, at that time, it was common knowledge in Carigara, Leyte that Atty. Ronquillo was performing the duties of a notary public.

Moreover, Respondent-Appellee declared that he was the one who took care of Asuncion while she was still alive until the latter's death since they were living together in the same house. At present, he is in possession of the subject parcels of land except for one parcel, he added.

On 8 October 2010, the trial court rendered the assailed Decision[10] dismissing Petitioners-Appellants' petition. It ruled that the questioned deed of donation satisfies all the requirements of a valid donation as prescribed under Art. 749 of the Civil Code. It added that while Petitioners-Appellants questioned the signature of Asuncion appearing in the said deed of donation as a forgery, they however, failed to substantiate their allegation. In fact, no expert witness was presented to prove that the signature of Asuncion as appearing in the said deed was not really hers, according to the trial court.

On Petitioners-Appellants' allegation that the notary public who notarized the deed of donation was not duly commissioned to perform notarial acts, the trial court ruled that under the old notarial law enforced at the time of the execution of the deed of donation, a notarial commission can be obtained from the Regional Trial Court of the Province or City where the applicant seeks to discharge his functions. Once commissioned, the applicant may discharge his functions within the province and the cities within that province. Thus, the certifications presented by Petitioners-Appellants to the effect that Atty. Ronquillo was not duly commissioned as a notary public in the year 1992 are inconclusive as it was possible for Atty. Ronquillo to have applied for a notarial commission in any of the many Regional Trial Court branches within the province of Leyte, according to the trial court.

Not satisfied, Petitioners-Appellants filed a Motion for Reconsideration and Motion for New Trial[11] of the trial court's decision on 3 December 2010. In an Order[12] dated 28 January 2011, the trial court denied Petitioners-Appellants' motion.

Aggrieved, Petitioners-Appellants interposed the present appeal. On 21 November 2011, they filed their Appellants Brief[13] raising several assignments of error which can be summarized into one pivotal issue, to wit:

WHETHER OR NOT THE QUESTIONED DEED OF DONATION DATED 14 OCTOBER 1992 IS VALID.


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RULING

We DENY the present appeal for lack of merit.

Petitioners-Appellants, in their brief, reiterated that the deed of donation executed by the late Asuncion Melgar in favor of Respondent-Appellee is a nullity as it was not carried out in accordance with the mandatory requirements prescribed under Article 749 of the Civil Code, particularly on the requirement that the donation of an immovable must be made in a public instrument. They mainly anchored their argument on the supposed lack of authority on the part of Atty. Ronquillo, the lawyer who notarized the deed of donation, to perform notarial acts. To bolster their claim, they presented several certifications from the clerks of court of the different Regional Trial Court branches in the province of Leyte to the effect that Atty. Ronquillo was not duly commissioned as a notary public in the year 1992. However, they did not mention if all the branches of all the Regional Trial Courts in the province of Leyte issued the same certification.

They argued that Article 749 of the Civil Code mandates that the donation of an immovable must be made in a public instrument and a public instrument is one that is authenticated by a duly commissioned notary public. Since Atty. Ronquillo was not duly commissioned to perform notarial acts, the deed of donation remained a private instrument. Thus, the donation is null and void as it was not made in a public instrument pursuant to the aforementioned provision.

On the other hand, Respondent-Appellee filed his Appellees Brief[14] on 27 January 2012. He countered that notwithstanding the certifications presented by Petitioners-Appellants, these do not categorically prove that Atty. Ronquillo was not duly commissioned as a notary public. In fact, Atty. Blanche Salino, one of the clerks of court who issued the said certifications, testified that she cannot categorically conclude whether a commission was issued to Atty. Ronquillo since no available record of any notarial commission issued in the years 1991 and 1992 existed in their office, Respondent-Appellee added. He asserts that the donation is valid as it was made in a public instrument and as such, it enjoys the presumption of regularity.

Upon a careful consideration of all the evidence and the testimonies of witnesses presented by both parties, this Court finds the present appeal without merit.

At the outset, it has not escaped Our attention that the Petitioners-Appellants (herein referred to as “Plaintiffs-Appellants”) appear to have erroneously categorized their petition (should read as “Complaint”) with the trial court as a special civil action. However, as the trial court correctly remarked, this is erroneous since Special Civil Actions pertain only to those actions defined under Rules 62 up to 71 of the Rules of Court. Plaintiffs-Appellants’ cause of action cannot be the proper subject of a Special Civil Action. Nonetheless, settled is the rule that the designation or caption is not controlling as it is not even an indispensable part of the complaint; the allegations of the complaint control.[15] Plaintiffs-Appellants’ allegations indicate that the present action is an ordinary civil action thus, it should be treated as such.

Coming now to the crux of the present controversy, We are confronted with the issue on whether or not the subject deed of donation is valid. We are convinced that the deed of donation executed by Asuncion is valid for the reasons discussed below.

A donation is defined as an act of liberality whereby a person disposes gratuitously a thing or right in favor of another, who accepts it.[16] As a mode of acquiring ownership, donation results in an effective transfer of title over the property from the donor to the donee.[17] It is perfected from the moment the donor knows of the acceptance by the donee,[18] provided the donee is not disqualified or prohibited by law from accepting the donation. Once the donation is accepted, it is generally considered irrevocable, and the donee becomes the absolute owner of the property.[19] The acceptance, to be valid, must be made during the lifetime of both the

donor and the donee.[20] It may be made in the same deed or in a separate public document,[21] and the donor must know the acceptance by the donee.

Moreover, the donation of real property, which is a solemn contract, is void without the formalities provided under Article 749 of the Civil Code of the Philippines. Article 749 of the Civil Code states:

> Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.
>
> The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.
>
> If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

Article 749 of the Civil Code requires that the donation of real property must be made in a public instrument. Otherwise, the donation is void. From the aforesaid provision, there are three requisites for the validity of a simple donation of a real property, to wit: (1) it must be made in a public instrument; (2) it must be accepted, which acceptance may be made either in the same Deed of Donation or in a separate public instrument; and (3) if the acceptance is made in a separate instrument, the donor must be notified in an authentic form, and the same must be noted in both instruments.[22] A deed of donation acknowledged before a notary public is considered a public document.[23]

Plaintiffs-Appellants do not dispute that Asuncion made a donation during her lifetime. What they are challenging is the validity of the deed of donation as allegedly, it was not executed in accordance with the mandatory requirements set forth under Article 749 of the Civil Code. They maintained that the donation is null and void since the person who purportedly notarized the deed of donation was not duly commissioned to perform notarial acts as shown by the certifications issued by the clerks of court of the different Regional Trial Court branches in the province of Leyte.

This necessitates an examination of the old notarial law in force at the time of the execution of the questioned deed of donation. Prior to the enactment of the 2004 Rules on Notarial Practice, Act 2711[24] is the governing law on notarial practice. Sections 232 and 240 of the said act, which are pertinent to the present controversy, reads:

> SECTION 232. Appointment of notaries public. – Judges of Court of First Instance in the respective provinces may appoint as many notaries public as the public good requires, and there shall be at least one for every municipality in each province. Notaries public in the City of Manila shall be appointed by the Supreme Court or, during vacation, by the Supreme Court judge assigned to vacation duty.
>
> SECTION 240. Territorial jurisdiction. – The jurisdiction of a notary public in a province shall be co-extensive with the province. The jurisdiction of a notary public in the City of Manila shall be co-extensive with said city. No notary shall possess authority to do any notarial act beyond the limits of his jurisdiction. (Emphasis supplied).

It is evident from the aforementioned provisions that the appointment of notaries public is lodged with the Judges of the Courts of First Instance (now Regional Trial Courts) in the provinces. Once appointed, the notary public may perform his functions within the territory of the province. Consequently, the notary public may execute notarial acts even in places beyond the territorial jurisdiction of the Court of First Instance that issued the appointment, but within the territory of the province.

Applying the foregoing provisions, it is clear that the certifications relied upon by Plaintiffs-Appellants do not

categorically prove Atty. Ronquillo's alleged lack of authority to perform notarial acts. As the trial court correctly ruled, Atty. Ronquillo may have applied for a notarial commission in any of the many Regional Trial Courts in the Province of Leyte although he was based in Carigara, Leyte. Moreover, Plaintiffs-Appellants also failed to mention whether all the Regional Trial Courts in the Province of Leyte issued the same certification.

This seemingly broad authority granted to notaries public was addressed and rectified by the 2004 Rules on Notarial Practice[25]. Under Section 11, Rule III of the said rule, a notary public may perform notarial acts only within the territorial jurisdiction of the commissioning court. The exercise by a notary public of his functions is limited unlike the old notarial law.

Furthermore, the testimony of Atty. Blanche A. Salino, former clerk of court of the Regional Trial Court of Tacloban City who issued one of the certifications, militates against Plaintiffs-Appellants' claim. On cross-examination, she testified viz:

> Cross-examination by Atty. Sabarre
>
> "Atty. Sabarre
>
> Q: Panera, when you say the office has no available records of the notarial commission issued in the year 1991 and 1992, can you please clarify this for the appreciation of the Honorable Court? Does it mean to say that there was no commission or there were no records of the documents in your office?
>
> A: As what the certification says... the office has no available record of the notarial commission issued for those years 1991 and 1992. As to whether a commission has been issued, we would have no basis to say so because no records exist in our office."[26] (Emphasis supplied).

The testimony of Atty. Salino bolsters Our finding that the aforesaid certifications do not categorically establish that Atty. Ronquillo was not duly commissioned to perform notarial acts in the year 1992. There is a great possibility that Atty. Ronquillo was issued a notarial commission by the other Regional Trial Courts in the Province of Leyte.

What is more, the trial court observed that Plaintiffs-Appellants stipulated with Defendant-Appellee regarding the fact that Atty. Ronquillo was notarizing documents in Carigara, Leyte on 14 October 1992. This shows that Atty. Ronquillo was known to be performing the duties of a notary public on the said date. It is an indication, although not absolute, that Atty. Ronquillo had the authority to perform notarial acts.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[27]

In the present case, Plaintiffs-Appellants failed to overcome the burden of proving their claim by preponderance of evidence that Atty. Ronquillo was not duly commissioned as a notary public. Therefore, it can be safely presumed that Atty. Ronquillo was duly authorized to act as a notary public in the year 1992. It follows that the donation executed by Asuncion in favor of Defendant-Appellee was valid since all the requirements for donations of real property set forth under Art. 749 of the Civil Code have been complied with.

The trial court likewise found that the preponderance of evidence presented by the Defendant-Appellee has shown that the questioned deed of donation was in fact duly and legally executed by Asuncion. It is a hornbook doctrine


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that the findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying.[28] We do not see any reason to disturbed the trial court's findings.

All the foregoing premises considered, We find that there is no more need to resolve the other issues advanced by the Plaintiffs-Appellants.

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 26 of Carigara, Leyte dated 8 October 2010 and its Order dated 28 January 2011 denying Plaintiffs-Appellants' Motion for Reconsideration and Motion for New Trial are hereby AFFIRMED.

**SO ORDERED.**

Delos Santos, E.L., Chairperson., and Lagura-Yap, M.B., JJ., concur.

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[1] Records, pp. 408-420.

[2] Ibid., pp. 1-9.

[3] Ibid., pp. 504-507.

[4] Ibid., pp. 421-439.

[5] Ibid., pp. 10-11.

[6] supra., note 2.

[7] Records, pp. 35-38.

[8] Ibid., pp. 74-79.

[9] Ibid., pp. 218-223.

[10] supra., note 1.

[11] supra., note 4.

[12] supra., note 2.

[13] Rollo, pp. 21-61.

[14] Rollo, pp. 199-212.

[15] Spouses Bulaong vs. Gonzales, G.R. No. G.R. No. 156318, September 5, 2011 citing Sumulong vs. Court of Appeals¸ G.R. No. 108817, May 10, 1994.

[16] Article 725, Civil Code.

[17] Shoppers Paradise Realty and Development Corp., vs. Roque, G.R. No. G.R. No. 148775, January 13, 2004.

[18] Article 734, Civil Code.

[19] Quilala vs. Alcantara, et. al., G.R. No. G.R. No. 132681, December 3, 2001.

[20] Article 746, Civil Code.

[21] 2[nd] Paragraph, Article 749, Civil Code.

[22] Arangote vs. Spouses Maglunob, G.R. No. 178906, February 18, 2009.

[23] Department of Education vs. Del Rosario, et. al., G.R. No. G.R. No. 146586, January 26, 2005.

[24] Revised Administrative Code of the Philippines. .

[25] A.M. No. 02-8-13-SC.

[26] TSN dated 14 February 2008, p. 4.

[27] Chua vs. Westmont Bank, et. al., G.R. No. 182650, February 27, 2012 citing Eulogio vs. Apeles, G.R. No. 167884, January 20, 2009.

[28] Riosa vs. Tabaco La Suerte Corp., G.R. No. 203786, October 23, 2013 citing Tayco vs. Heirs of Concepcion Tayco-Flores , G.R. No. 168692, December 13, 2010.

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