

**SERAFIA BAS, JORGE BAS, BASILISA BAS DE GIANAN, ASSISTED BY
HER HUSBAND TOMAS GIANAN, AND RITA BAS DE MANLAGNIT,
ASSISTED BY HER HUSBAND JULIAN MANLAGNIT, PLAINTIFFS AND
APPELLA...**

G.R. No. L-2150. July 20, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

Vicente Bas married twice. The plaintiffs-appellants are his legitimate children by his first wife Felipa Santelices. The defendant-appellee Paulina de los Reyes is his second wife, whom he married on October 15, 1928.

After the death of his first wife, and before marrying the defendant, Vicente Bas acquired by purchase from Luisa Balaivo (Annex A), the parcel of land which is the subject-matter of this litigation that arose after his death, the plaintiffs claiming it as inheritance from their father, and the defendant as a gift in consideration of marriage, by virtue of the note appearing at the back of the document of sale Annex A, which was written and subscribed by Vicente Bas:

"This date October 15, 1928, I am giving to "Señora" Paulina de los Reyes this document of sale to show that she is now the real owner of this document and without trouble of any kind for I shall be responsible to any heir. In witness whereof, I signed this date.

"Calolbon, October 15, 1928.

(Sgd.) "Vicente Bas"

In the Court of First Instance of Catanduanes (where the property is located), the controversy was submitted upon a stipulation of facts, and the issue was stated to be whether the defendant had acquired any real right by virtue of the above annotation, the plaintiffs maintaining the negative side, on the ground that as the transaction was a donation, it should have been evidenced by a public instrument and accepted by the donee. The defendant on the other hand contended that a mere memorandum was sufficient under the statute of frauds.

The trial court rendered judgment for the defendant. The plaintiffs appealed. They invoke the decisions of this court in *Camagay vs. Lagera*, *Velasquez vs. Biala* and *Solis vs. Barroso* [*] all holding that, to be valid as between the parties and as regards third persons, a donation propter nuptias must be made in a public instrument. The doctrine was founded mainly on articles 1328 and 633 of the Civil Code.

The above decisions appear to be conclusive on the matter.

The trial judge believed that inasmuch as under the statute of frauds a mere memorandum signed by Vicente Bas was sufficient to prove "an agreement made upon the consideration of marriage" there was in this case a valid transfer of the realty to the defendant. His Honor probably noticed that none of the above three cases discussed the effects of the statute of frauds upon article 633 of the Civil Code; and so he felt free to opine differently.

But upon reflection, it will be perceived that the statute of frauds merely provides for rules of evidence referring to the form of contracts. Whereas the above civil law articles concern the substantial validity of the contract or transaction.

In other words, by virtue of the statute of frauds, the agreement in consideration of marriage could be proved by the memorandum; but the effect of such private writing is governed by the Civil Code.

The appellee notes that section 335 of the Code of Civil Procedure which is the source of section 21, Rule 123, has the caption "Agreements invalid unless made in writing." He argues that, by inference, the agreements mentioned therein are valid if in writing. The caption is misleading, as has been pointed out in *Conlu vs. Araneta* (15 Phil., 387), *Gallemit vs. Tabiliran* (20 Phil., 241), and others, because the section speaks of evidence—not validity. Anyway, the caption of section 21, Rule 123, is actually "Agreements which must be evidenced by writing." Which represents the true principle established by the rule.

Now, as a contract mentioned in the statute of frauds is not per se null and void simply because it is not written,[1] it follows e converso, that such contract does not per se become valid simply because it is written.

Premises considered, the appealed decision is reversed and the disputed parcel is declared to be property of plaintiffs as heirs of Vicente Bas. The defendant will pay costs. So ordered.

Ozaeta, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[*] 7 Phil., 397; 18 Phil., 231; 53 Phil., 912.

[1] See *Conlu vs. Araneta*, *Gallemit vs. Tabiliran*, etc.

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