

JULIO FERNANDEZ, ETC., PLAINTIFF AND APPELLANT, VS. TERESO FERNANDEZ ET AL., DEFENDANTS AND APPELLEES.*G. R. No. L-2667. February 13, 1951*

Ponente: FERIA, J.

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Section 29 of the Judiciary Act of 1948 provides that the Court of Appeals shall have exclusive appellate jurisdiction over all cases, actions and proceedings not enumerated in section 17 of this Act, and among the civil cases and special proceedings not enumerated in section 17 of said Judiciary Act are those in which the value in controversy does not exceed fifty thousand pesos exclusive of interests and costs, and cases and special proceedings in which errors or questions of fact and law are involved. So in special proceedings, like the present, the Court of Appeals has exclusive appellate jurisdiction to review the final judgment or decree of the Court of First Instance, if questions of law and fact are involved in the case. The only case in which the appeal may be taken directly to the Supreme Court according to section 3, Rule 42, of the Rules of Court is, when "the appellant shall state in his notice of appeal that the appeal is based purely on question of law and then no other questions or question of fact shall be allowed, and the evidence need not be elevated." Because, in such case, although questions of fact and law are involved in the case or passed upon by the lower court in its judgment, the appellant is considered as admitting as correct the findings of fact of the lower court, and therefore he can not be allowed to at-tack or impugn said findings of fact.

In the present case the appellant expressly appealed from the judgment of the Court of First Instance of Cebu to the Court of Appeals, and asked the lower court that his record of appeal be elevated to said Court of Appeals together with the documentary and testimonial evidence presented during the trial of the case. Both appellant and appellee filed their briefs with the Court of Appeals, the appellant on August 14, 1948, and appellee on September 23, 1948. And the appellants', in the first assignment of error in their brief, quote, on pages 12 and 13 thereof, a portion of the testimony of the appellant Tereso Fernandez in support of their contention that the personal services rendered to the donor by the donee Tereso Fernandez do not constitute recoverable debts, and therefore the donations in question are gratuitous or simple according to articles 618 and 619 of the Civil Code, and not remunerative ones of the same value as that of the properties donated, as held by the lower court, and therefore are subject to collation under article 1035 of the same Code. And in the second assignment of error, the appellants allege that the lower court erred in not declaring that the donations, being subject to collation, are inofficious because their value exceeds the legitimes of the donees and the disposable portion of the estate of the deceased donor, taking into consideration the documentary evidence Exhibit I presented during the trial which shows that the total value of the estate of the deceased, aside from that of the properties donated to the appellants, amounts to P8,850.75. The lower court did not make any finding of fact as to the amount of the estate of the deceased, because it was not necessary for the lower court to do so in view of its decision that the donations are onerous or for valuable consideration and therefore not subject to collation; but if the appellate court would decide that the donations in question are gratuitous and therefore subject to collation, it should have to revise the evidence as to the total amount of the estate of the deceased for the purpose of determining whether or not they are inofficious as

contended by the appellants in their reply to the defendant's answer and second assignment of error.

The foregoing notwithstanding, just because, on one hand, the appellants state at the beginning of their brief that the questions in issue in the present case boil down to "whether the donations of the lots 1287 and 248 to the appellees Tereso Fernandez and Vicenta Fernandez, respectively, legitimate children of the donor, are onerous or simple and whether the said lots are subject to collation," and "our arguments therefore will refer exclusively to these two purely legal questions, for we understand that there is no question of fact involved in this case"; and on the other hand, the appellants and appellee filed with the Court of Appeals a joint motion to forward the record to the Supreme Court on the ground that "the questions raised in the present case are purely legal and no single question of fact is involved," and "that no question of law similar to the ones involved in the present case have heretofore been decided by our Supreme Court"; the Court of Appeals in its order of November 16, 1948, certified "the record of this case to this Supreme Court as coming within the latter's exclusive jurisdiction."

In view of all the foregoing, we are of the considered opinion that the Court of Appeals would not, because it could not, have certified this case to this Supreme Court as falling within this court's exclusive jurisdiction, if the Court of Appeals had examined, as it should have, the brief of the appellants, and had not relied only on the appellants' statement that they "understand" that there is no question of fact involved in this case (porque entendemos que no hay ninguna cuestion de hecho envuelta en esta causa), and on the erroneous conclusions of both the attorneys¹ for the appellants and appellee in their joint motion that the "questions raised in the present case are purely legal;" because as we have already stated the appellants raise question of fact in their brief.

Besides, the appellate court can not pass upon the question of law whether the donations in question, made in consideration of personal services to donees had rendered to the donor, are simple or for a valuable consideration, without determining first whether or not the services rendered constitute recoverable or demandable debts; because a donation for services previously rendered are remunerative or for a valuable consideration if the services constitute recoverable debts; otherwise it is simple donation. The lower court did not make any finding of fact as to whether the services previously rendered by the donees to the donor constituted recoverable or demandable debts, on the wrong assumption that this court ruled in *Manalo vs. De Mesa* (29 Phil., 495, 500) that all donations for services previously rendered are remunerative or for a valuable consideration. What this court held in that case was that "There can be no doubt that the donation in question was made for valuable consideration since the donor made it conditional upon the donee bearing the expenses that might be occasioned by the death and burial of the donor Placida Manalo, a condition and obligation which the donee Gre-gorio de Mesa carried out in his behalf and for his wife Leoncia Manalo". And the syllabus in that case says "A donation of a realty conditioned that the donees would meet and bear the expenses that might be incurred by reason of the donor's death and burial, must be classified as a donation for a valuable consideration."

Wherefore it is ordered that the record of this case be remanded or returned to the Court of Appeals for proper action.

Moran, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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